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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920.

No. [redacted]31

UNITED MINE WORKERS OF AMERICA ET AL.,
PLAINTIFFS IN ERROR,

vs.

CORONADO COAL COMPANY ET AL., DEFENDANTS IN ERROR.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

REPLY BRIEF FOR PLAINTIFFS IN ERROR.

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Of Counsel for Plaintiffs in Error.

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REPLY BRIEF FOR PLAINTIFFS IN ERROR.

Notwithstanding the elaborate and painstaking brief of defendants in error, the fundamental propositions urged by us in our main brief remain untouched.

It is not denied that the United Mine Workers of America was a lawful organization, with lawful objects; and it is not

shown, and it would be futile to attempt to show, that there was any agreement among the members to pursue these purposes by unlawful means.

But, unless it could be shown that the United Mine Workers of America constituted an unlawful combination or conspiracy in restraint of interstate trade and commerce, there is no basis for a judgment under section 7 of the Sherman Act. The property of the miners in Pennsylvania and Illinois, in Indiana, or in Texas and Oklahoma, may not be taken in execution of a judgment for treble damages, unless it is shown that these miners were engaged in the unlawful conspiracy denounced by the Sherman Act. And it makes no difference, in this aspect of the case, whether it is the individual property of the miner in Pennsylvania that is sought to be taken, or whether it is his interest in the common property of the association. In either event it is incumbent upon plaintiffs to show that these miners were engaged in a combination or conspiracy in restraint of interstate trade and commerce.

We had assumed that the defendants in error, in default of any other basis for their contention, would assert that the proof of this alleged conspiracy was to be sought in the joint conference debates between operators and miners of the Central Competitive Field, in the proceedings at miners' conventions, and in the articles in the United Mine Workers' Journal. We accordingly showed not only that this evidence was drawn from various individual statements in controversies and debates and in articles in no way binding the members to any agreement or purpose other than that expressed in their constitution, but that it utterly failed to support the contention and was wholly insufficient to show any conspiracy in violation of the Sherman Act, and had no relation to interstate commerce in coal, and that it had reference solely to production and methods of production with which the miners were naturally and properly concerned.

The correctness of our exposition of the character and pur-

port of the joint conference debates and the other declarations of policy of the union officers is not challenged by defendants in error. No attempt is made by them to show that the United Mine Workers of America, by reason of its policies as thus set forth, is an illegal organization. The purpose of defendants in error in introducing these extracts from the joint conference debates is now stated to be—

> "to show the necessary intent and motive for defendants' acts in destroying plaintiffs' business and property, and to give the jury a proper basis for its finding that such acts were done for the purpose of benefiting defendants' organization—to restrain interstate competition and commerce—and not for the purpose alleged by the defendants" (Brief, page 36).

In other words, the speeches at the joint conference debates were introduced in evidence to show the motive and intent of the Arkansas individuals who destroyed plaintiffs' property. We pass by, for the moment, the obvious point that the speeches in conferences in the Central Field, thousands of miles away and most of which were made many years before, had no proper relevancy to an inquiry as to the intent and motive of individuals in the local disturbances and disorders in Arkansas. It being clearly shown and apparently recognized that it is impossible to maintain that either the joint conference debates or the announced policy of defendants' officers affords any basis for a conclusion that the United Mine Workers of America was engaged in a conspiracy in restraint of interstate trade and commerce, it follows as a necessary result that we have a case brought under section 7 of the Sherman Act against the International Association and District 21, without any proof whatsoever that the miners composing this International Association or this District 21 are engaged in a conspiracy in restraint of interstate trade and commerce.

Not only is there no ground for the contention that there

was a general conspiracy on the part of the miners in restraint of interstate commerce, but it is equally untenable to argue that there was any conspiracy on the part of the United Mine Workers of America, or of District 21, against the mines of the defendants in error.

What is the evidence relied upon by the defendants in error to show that the union miners in Pennsylvania, Illinois, Indiana, Oklahoma, and Texas conspired to prevent by unlawful means the operation of plaintiffs' mines on a non-union basis? On page 71 of the brief of defendants in error there is the heading: "Acts and declarations of officers and members of the union and their sympathizers participating in the destruction of plaintiffs' business and property and use of union funds thereof." Under this heading we find the version of defendants in error of the facts concerning the destruction of their property. It fills over 53 pages in the brief of their counsel (pages 71-125). But with what result? The miners of Pennsylvania, Illinois, Indiana, and Texas are not referred to. And yet it is their property which is to be taken by this judgment, or their interest in the common property of both the International Union and District 21, upon the theory that they are engaged in a conspiracy in restraint of interstate trade. There is no evidence to show that the members of District 21, much less of the International Union, were engaged in any such conspiracy.

Coming, then, to the next subdivision of the brief of defendants in error, "Statements in Defendants' Official Publications and Proceedings" (pages 125 to 164), the matter is carried no further. There is no reference to anything at all, showing that there was an unlawful conspiracy on the part of the miners of the country at large or of District 21 to destroy plaintiffs' mines by fire and dynamite.

There is an attempt to show that certain officers of the international and district organizations encouraged the Arkansas individuals in their conduct, and that this conduct had

been approved by the United Mine Workers' Journal, and by certain action taken by District 21.

It is manifest, however, that the miners throughout the country who had become members of a country-wide organization, with lawful purposes, properly defined in their agreement of membership, could not be prejudiced by wholly unauthorized statements of officers; and that, so far as the International Union is concerned, the evidence affords no warrant for penalizing the members for any unlawful acts. And in the case of District 21, which embraced the States of Oklahoma, Texas, and Arkansas, the miners had given no authority to the district organization to authorize or approve the commission of illegal acts.

But, aside from this, the essential point for the present purpose is that the argument of defendants in error wholly ignores the nature of this action and the only ground upon which a recovery can be justified under the statute. Counsel for defendants in error seem to be under the impression, if they can show that the officers of District 21 did certain things which are construed to be approval of the acts of the defendants in Arkansas in the destruction of property, that upon this ground the defendants in error are entitled to recover under the Sherman Act. This is a plain *non sequitur*.

The theory of counsel for defendants in error is thus stated on page 169 of their brief, where the evidence is referred to, and the contention of the defendants' in error based upon this evidence is thus summarized:

> "This association is liable for torts committed by its authorized agents in the course of their duties and ratified by its delegated officers and by its membership in convention assembled, just as are corporations."

This statement shows an utter misapprehension of the case to be proved. This action is not one at common law to recover damages against a principal for the alleged wrongs

of his agent. The gist of this action is a conspiracy in restraint of interstate trade and commerce. Unless the evidence introduced by defendants in error proves this conspiracy upon the part of the alleged principals, there is no basis for a judgment under section 7 of the Sherman Act.

So far as the evidence concerns the International Association, we refer the court to our main brief (pages 119-122), where the evidence upon which the defendants in error rely is considered and analyzed.

As to District 21, while it is true the so-called strike at Prairie Creek was under the supervision of the District and that the District bore many expenses connected with the so-called strike, the fact remains as true of the District as of the International Association, that the members whose property is sought to be taken by this judgment were not engaged in any conspiracy against plaintiffs' mines or any other mines. Moreover, the fact that the District Conventions authorized the payment of strike benefits, and even of court fines, would not show that this was done in the course of any conspiracy in restraint of interstate trade and commerce.

This brief survey of the evidence offered by the defendants in error to prove the alleged conspiracy in violation of the Sherman Act shows the total absence of a basis for this contention. The Sherman Act was not devised to provide an additional remedy for persons whose property was destroyed even by collective action. The remedy which it provided by section 7 was only incidental to the purpose of the act to forbid unreasonable restraints of interstate trade and commerce—a fact which is totally absent in this case.

Defendants in error have sought to recover treble damages for the destruction of their property, upon the doctrine of *respondeat superior*. Even on this doctrine there could be no recovery against the United Mine Workers of America, and also we insist there would be no adequate basis for a recovery against District 21. In any event, the case is de-

void of testimony showing the participation of the alleged principals, members of the union, in a conspiracy in restraint of interstate trade and commerce, which is the only ground upon which the Sherman Act could be invoked.

The second fact of controlling importance which has not been touched by the brief of defendants in error is that there is no evidence showing that the *individuals* who destroyed plaintiffs' property had any motive or intent to interfere with interstate commerce in coal. We referred in our main brief to the fact that the individuals in Arkansas were interested in *production* and methods of production and not in interstate commerce in coal. Defendants in error attempt to answer this proposition by accusing us of confusing motive with intention (page 239). It is said:

> "The other side confuses motive with intention.
>
> "When a hunter shoots a duck, his motive is to get food, or to satisfy his vanity by proving his skill and superiority.
>
> "His intention is to kill the duck.
>
> "The motive of the unionists who destroyed plaintiffs' property and business may have been to benefit their craft by unionizing all the mines of the country, just as that of Germany was to insure the spread of kultur throughout the world.
>
> "Their immediate purpose and intention was to prevent plaintiffs from shipping their coal to other States in competition with that there mined with Union labor."

Defendants have, however, failed to apply to the facts of this case their illustration as to the hunter who kills the duck. If the evidence of defendants in error is accepted as true, it was the intention of various persons in the community to drive off non-union men who were employed at Prairie Creek Mine No. 4. Some of them were guards and some, it may be assumed, were engaged in mining coal.

In the course of this raid, property at Prairie Creek Mine No. 4 was burned. It was the intention of these individuals, if plaintiffs' evidence be accepted, to interfere with the production of coal by non-union men.

If one of their motives was, as is alleged by defendants in error, to interfere with interstate commerce, this was susceptible of proof. But it is precisely this proof which is wholly lacking. The motive and intent of these individuals must be determined from their acts as explained by their declarations. And, as we pointed out, and as cannot be denied, these acts were prompted, not by any fanciful injury to the interstate trade of union operators in other States, but by what the miners conceived to be a most real injury to themselves in Bache's determination to run his mines non-union—that is, to use non-union labor in the production of coal. It is idle for defendants in error to contend that the passions which were shown to have been aroused in Hartford Valley were due to some fantastic conception of harm to union operators forced to compete with Bache. It was the wrong which the union men conceived had been done to them in that locality and in their means of obtaining a livelihood by working in the particular mines, by the violation of their agreement and by the employment of non-union men, that, if the evidence of defendants in error be accepted, prompted these injuries.

Nor are defendants in error assisted in their attempt to show that the motives of the persons who destroyed plaintiffs' property were somehow connected with interstate commerce in coal by a reference to the joint conference proceedings and the declarations of policy of defendants' officers. Certainly, if the individuals in Arkansas were influenced by such considerations, some indication of such a motive would have escaped and have found its way into the record. But, notwithstanding the many witnesses called by defendants in error as to the declarations of the alleged conspirators in

Arkansas, there is not the slightest reference to the harm which might come to the union operators in other States.

Nor do we mean, as defendants in error suggest (page 239), that neither Pete Stuart, Red Doyle, or Sandy Robinson "had ever read Gibbons *vs.* Ogden." What we do mean is, that if the acts of these Arkansas individuals in destroying property are to be considered as having some reference to interstate commerce, that reference does not appear from the mere destruction of the property. It does not appear in any of the transactions leading to the destruction of property. That in itself is a mere local matter of which the States have complete control. And if this action has reference to interstate commerce, it must be because of the motives of those engaged therein. That there is no proof in the present case of any such motive is, we submit, perfectly clear. The notion of any conspiracy in restraint of interstate commerce is wholly fanciful, and it is apparent that the cause of action that these defendants in error are really trying to prosecute is an ordinary action in law having no reference to any Federal statute.

Not only, however, have defendants in error left untouched our point that there is no evidence of conspiracy in restraint of interstate trade; not only have they misapprehended our point that the individuals in Arkansas had no intention of interfering with interstate trade, but, even approaching the case upon their own theory of *respondeat superior* (which we submit is erroneous), they have failed to show that there is any relation of agency between the International Association and the so-called strikers at Prairie Creek.

It is not denied that District 21 called the strike at the Coronado mines; that the officers of District 21 supervised the conduct of this strike; that whatever strike benefits were

paid came from the treasury of District 21 and whatever expenses grew out of the strike were paid by the same district. It is also not denied that the International Association did not call the strike; that no moneys were paid by the International Association in support of the strike, and no action by the International Executive Board was taken with reference thereto.

Upon these facts, we submit, it is plain that if the relation of agency existed at all between the miners at Prairie Creek and a superior organization it existed as to District 21 and not as to the International Association.

We submit that it makes no difference whether the word "responsibility" in the constitution of the United Mine Workers of America should be taken to mean *liability* or *initiative*. In either case the relation of agency did not exist. What the Constitution said was "responsibility." What is *"responsibility"?* It is the essence of the duty to *respond*. It is the obligation to answer for what is done. It is the pith of the obligation involved in the conception *respondeat superior*. If the superior must respond, it is simply because he is responsible, and when the constitution of the United Mine Workers of America says that a given strike may be called by a district on its own *responsibility*, it means that the strike is not being called on the responsibility of the United Mine Workers of America—that is, that neither the United Mine Workers of America nor its members are to respond for the strike or for any of its consequences.

The case of *Denaby and Cadeby Main Collieries, Ltd., vs. Yorkshire Miners' Association,* (1906) App. Cases, 384, cited in our main brief upon this question of agency, we submit, is indistinguishable from the present one.

Suability.

We come now to the question whether the United Mine Workers of America is a "person" within the meaning of section 8 of the Sherman Act. This section is as follows:

> "That the word 'person' or 'persons,' wherever used in this act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

It is apparently recognized—at any rate, we conceive that it must be recognized—that this language does not simply mean any unincorporated association whose activities are conducted under the law, in the sense merely that they are *lawful* or that the law affords the general protection which it gives to any individual or group of individuals in any activity that is not prohibited. As we have pointed out in our main brief, if this were the meaning of the clause, it would make the entire clause surplusage. Every unincorporated association of any sort, although not a person in law, or not having been clothed in any way with the attributes of a person in law, would be within the section, provided the group of persons were conducting activities that were not unlawful—that is, we could at once dismiss the clause as not having any import and simply say "any association" or "any unincorporated association."

The extraordinary result would be that the only associations not within the clause would be unlawful associations, which it could hardly be supposed it was the intention of Congress to exclude.

But, if the clause does not mean broadly any association conducting any lawful activity, and is not to be rejected as surplusage, it must have a more limited content. What, then, is the principle of limitation to be applied?

It is in entire accord with precedent to invoke, as it is here plainly necessary to invoke, some principle of limitation in dealing with such descriptions of associations. Thus in *Elliot vs. Freeman,* 221 U. S., 178, the description of associations found an appropriate limitation in its reference to the laws under which they were organized. And in *Crocker vs. Malley,* 249 U. S., 223, the very broad words of the Income Tax Act of 1913 as to associations—"however created or organized"—were construed as having appropriate limitation with reference to the subject-matter of the description.

It is also noted that the provisions here in question were not enacted by Congress after the decision in *Elliot vs. Freeman, supra,* in order to give a greater breadth of connotation. That case was decided under an act passed nineteen years after the Sherman Anti-trust Act, the Corporation Tax Act of 1909.

If we seek for the principle of limitation in defining "associations" in section 8 of the Sherman Anti-trust Act, it is upon the ground that all associations are not embraced, and we must look for the limitation of the definition in the immediate context. We conceive that there is no difficulty, however, in ascertaining the intent of Congress; for the clause

> "existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country,"

qualifies both corporations and associations.

We have, then, to apply the most familiar and elementary principle of construction. The clause was used in the same general sense with respect both to corporations and associations. It cannot be said that the clause limits only associations and not corporations, for it is by reason of the words of this clause that it is possible to reach a foreign corporation—that is, a corporation "existing under or authorized by * * * the laws of any foreign country."

Taking, then, the clause as qualifying both corporations

and associations, and always bearing in mind that the clause is not, with respect to associations, to be regarded as mere surplusage, as having reference to every association that conducts any lawful activity, it is apparent that those associations are intended which, in a special sense and analogous to the case of corporations, "exist under or are authorized by" the laws either of the United States or of some State or of some foreign country.

It is futile to attribute to Congress a nicety of intent in discriminating between the expression "existing under" and "authorized by." For if a corporation or association "exists under," it is "authorized by" unless the latter term is deemed to refer to an *express* authorization. But if such a contrast were intended, and "existing under" were deemed to refer to any group that was impliedly authorized in the sense that its activities were not forbidden, we should at once be returned to the initial difficulty of giving any proper meaning to the clause and it would appear to be a wholly meaningless addition.

Now there were, when the Sherman Anti-trust Act was passed, certain associations which had a distinctive character created by the laws of States and foreign countries. While they were not entities in the sense that an artificial being like that of a corporation had been created, they were endowed by statutes with a special character which distinguished them from other groups of persons and gave them a status like that of a person in law analogous to that of a corporation, and this character and status they owed to the "laws."

We conceive it to be perfectly clear, if we leave specious argumentation, that this was the sort of association to which Congress referred.

We have no desire to press upon the court any artificial construction, even of a highly penal statute; but certainly we think it proper to invoke fundamental principles of construction in confining penal statutes within their intended scope.

"Existing under or authorized by" the laws of the United States or of any State or of any foreign country means, in reference to associations as in reference to corporations, the creation by and under the law of some jurisdiction of an association with a distinctive character. Such an association, owing its distinctive character to the laws which provide for its formation and clothe it with the described attributes, exists under the laws in a special sense, not in the sense in which every individual or every group exists under law—that is, as not being an outlaw, but in the sense that it has a status, a character which makes it owe its existence to the laws.

That is the essence of the matter with respect to corporations, and that, we submit, is the meaning of this clause with respect to associations. And while such associations are not created as artificial entities, they owe their existence with their distinctive attributes to the laws of some jurisdiction, in that these laws provide for their formation and their special character.

The briefs of counsel for defendants in error and of the *amici curiæ* refer to many statutes of the United States, of several States, and of foreign countries which it is said recognize trade unions. These statutes, it may be noted, have very largely been passed since the Sherman Anti-trust Act was enacted. The contention seems to be that if any statute anywhere has in any manner recognized a labor union, then labor unions are to be deemed to be "associations" within the meaning of section 8 of the Sherman Act. But this is a very wide conclusion. It is not enough to bring an association within section 8 that it should merely be a group of persons conducting a lawful activity—that is, one not prohibited by law—then certainly it is not enough that some statute recognize its activity as lawful, or in some aspects of that activity give it some protection that is thought to accord with public policy. For example, much is made of legislation with respect to so-called union labels. All of this

legislation, it way be said in passing, is irrelevant here, for there is no union label for coal, and the United Mine Workers of America have nothing to do with union labels, and do not come under the statutes relating to union labels. But, aside from this, the recognition of a union label does not make an association one which has been created under or owes its existence and distinctive character to the "laws" of some jurisdiction.

There are various statutes which the defendants invoke which fall far short of the intended purpose, for they merely relate to some phase of recognition. But recognition goes no further than the recognition implied with respect to lawful activities. Every group of persons that are not conducting themselves unlawfully have, to the extent that protection is afforded to persons and property and lawful activities, recognition in the law, and the mere addition of some statutory recognition to extend the protection to some degree in no way changes the relation of the law to the group of persons. Something more than recognition of activities or mere protection to certain activities is required to give to an association the existence under the law analogous to that possessed by a corporation, so that it may be said to owe its existence to the laws, and hence to exist under the laws of some jurisdiction.

The number and variety of these statutes is not important. Section 8 of the Sherman Anti-trust Act does not read, as counsel for defendants in error point out (page 182 of their brief), " 'the laws of the several States,' but 'the laws of any State.' " And this is important in arriving at the meaning of the act. It was the intention, manifestly, of Congress that as you could point in the case of a corporation to some State or foreign country that creates it, endows it, constitutes it a person in law, so you should be able to point to some State or foreign country which has provided for the formation and existence with a distinctive character of the association which thus, although not the artificial entity of a

corporation, has still been created under the law as an institution owing its special character to the law. Of course, there are some corporations which are incorporated in more than one State, and there might conceivably be an association which had received such a distinctive character under the legislation of more than one State. But laws here and there, merely recognizing a lawful activity, fall in a very different category. They relate to the qualities of acts, not to the character of an organization.

We do not intend to go through the many statutes to which counsel have referred, for it seems to us they are entirely irrelevant, if a proper view of section 8 of the Sherman Anti-trust Act is taken.

Congress, when it passed the act, knew of the joint-stock associations which had been created with a special character under the laws of States. Congress would never have used this clause, applicable at once both to corporations and associations, if it had intended the far-reaching results involved in counsel's argument. If the act be taken simply and naturally, with the purpose of applying the act, and not of artificially construing it in order to accomplish a particular result, we conceive there is no difficulty at all about it.

The United Mine Workers of America is simply a voluntary association or group of persons, with a lawful constitution. It is not created under the laws of any jurisdiction; it does not owe its distinctive character to the laws of any jurisdiction; it is not endowed with anything corresponding to a personality by the laws of any jurisdiction.

We strongly urge that, to bring such an association under the Sherman Act by applying section 8 would be, not to construe, but to legislate.

The United Mine Workers of America has its central office in the State of Indiana, but it does not owe its existence or its distinctive character to the laws of the State of Indiana.

Defendants in error refer to five statutes of the State of

Indiana (pages 334-335). First, is the trade-union label act (3 Burns, Annotated Stat., Rev. 1908, section 10453-10463). This has no application to the United Mine Workers of America, as they have no trade-union label to be protected.

The second statute referred to is that making it a misdemeanor for any individual or corporation to prevent or coerce any employee "from forming, joining and belonging to any lawful labor organization" (1 Burns, Annotated Statutes, Rev. 1908, section 2683).

The purpose of this statute is plainly to protect an individual employee from coercion because of his membership in a union or his desire to join one. It certainly cannot be said that the United Mine Workers of America exists under and is authorized by this statute of the State of Indiana.

The third statute referred to provides that an arbitration agreement between employers and employees may be signed on behalf of the employees by the officers or committeemen of any "labor union or workingmen's society" to which they may belong (3 Burns, Annotated Statutes, Rev. 1908, section 7963). This statute has no bearing upon the question. The statute deals with arbitration agreements. We submit, it could not seriously be argued that because of such statute the United Mine Workers of America was an association existing under or authorized by the laws of the State of Indiana.

The next statute referred to (section 9348) contains instructions to a Bureau of Labor Statistics, requiring a biennial report covering "trade unions and other labor organizations and their effects on labor and capital." The purpose of this statute is merely to secure information. It is obviously of no assistance to the defendants in error.

The next and last statute referred to is that permitting coal miners, individually or through their organization, to recommend a miner for their examining board to pass on the qualifications of coal miners (Act 1911, chap. 276, page

658). One would hardly contend that by virtue of this statute the United Mine Workers of America were constituted an association existing under or authorized by the laws of the State of Indiana.

It is not necessary to refer to the statutes of other States. This review of the statutes of Indiana, where the International Association has its principal office, shows the vague character of the contentions urged by defendants in error as to the construction of the phrase "existing under or authorized by the laws" of any State.

That clause, we submit, has a very clear meaning in the light of its context, and none of the statutes referred to by the defendants in error are of any consequence, so far as the present controversy is concerned.

Reference is made by counsel to the fact that in Montague & Co. *vs.* Lowry, 193 U. S., 38, an association was sued. But the individual members were also parties and the record shows that the point was not raised. That case is not a precedent.

There is no basis for *process* in this caes against an unincorporated association. Counsel for defendants in error endeavor to stretch the act of Congress, and then seek, without any provision by Congress, to imply a procedure to fit the consequences of their reasoning. Both efforts, we submit, are entirely futile.

This is an action at law brought in the Federal court in Arkansas. Let it be assumed that the Conformity Act applies. But there is no provision in Arkansas for an action against unincorporated associations of this character.

Recognizing their difficulty, a vain attempt is made to appeal to a certain statute of Arkansas which obviously has no application.

The statute is as follows (Kirby & Castle's Digest, section 7446, brief of defendants in error, pages 204, 205):

> "Where the question is one of a common or general interest of many persons, or where the parties are numerous and it is impracticable to bring them all before the court within a reasonable time, one or more may sue or defend for the benefit of all."

This provision is the same in substance as that long used in chancery suits and which has been adopted in the equity rules of this court. If it applies to actions at law, even in Arkansas, it does not authorize an action against an association. The action is against the individuals, and the statute simply means that one or more individuals may defend for the benefit of all.

But defendants in error have never attempted to proceed even under this statute. On page 4 of their brief they state:

> "It has never been attempted in these proceedings to secure a personal judgment against individual members of the union not named as defendants."

The truth is that there is no statute in the State of Arkansas permitting this action against these unincorporated associations.

Still, failing to find any procedure in Arkansas which would be applicable under the Conformity Act, defendants in error have sought to invent a procedure of their own. Congress has not provided it; the State has not provided it. Counsel for defendants in error urge an implied procedure on the theory that Congress intended to do something which, in fact, it did not do. And the fact that Congress did not outline a procedure to fit the case merely goes to confirm the position that Congress did not intend to bring the case within the scope of the act's provisions.

Coercive Charge.

Defendants in error attempt to sustain the plainly coercive charge of the learned trial court, first, upon the ground that

the instructions were proper (pages 248–250); secondly, that no proper exceptions were taken by defendants (pages 251–264); and, thirdly, upon the theory that a direction of a verdict in favor of the plaintiffs would have been justified (pages 264–275).

Each of these propositions rests upon the fundamental error that the learned trial court correctly stated to the jury the propositions of law which were to govern their decision.

As we have already pointed out, the liability of the International Association, or of District 21, under section 7 of the Sherman Act depends upon whether its members were engaged in a conspiracy in restraint of trade. This question was not submitted to the jury. We also have pointed out that whether there was any intention to interfere with interstate commerce or whether it was the intention of the persons who destroyed plaintiffs' property merely to interfere with methods of production is the turning point of the case, so far as interstate commerce in coal is concerned. This question was not submitted to the jury. The exception of defendants' counsel to the charge of the trial court as to the liability of the International Association covers both of these points and was therefore properly taken.

Defendants in error state that in his main charge "The only question that the trial judge left to the jury was whether the mines had been destroyed with the intent of restraining interstate commerce or because of the alleged outrages committed by the company men" (page 268). In this charge there was no discrimination between an intent to interfere with production and an intent to interfere with interstate commerce. The jurors were told that unless they found that the purpose of the men who raided the property was to rid the country of the guards because of their misconduct in the community, a verdict should be brought in against all the defendants.

This was plainly wrong. Under such a charge as this, supplemented, as it was, by the final instructions fully set

forth in our main brief, it cannot be said that the verdict of the jury establishes that there was any conspiracy on the part of the members of the United Mine Workers of America, or on the part of the members of District 21, in restraint of interstate trade or commerce, and there is no finding upon which a recovery can be based.

It is quite clear that the defendants in error were not only not entitled to a direction of a verdict, but were not entitled to a verdict at all.

Misjoinder.

Defendants in error wholly misapprehend our position upon the question of misjoinder of parties and of causes of action, for they state in their first subdivision under this point that "the alleged error was not substantial." We pointed out in our main brief the different circumstances surrounding the four different fires complained of by the defendants in error. As to the fire at the Coronado mines, there was no evidence that any person connected with the United Mine Workers of America was implicated. The same is true as to the fire at the Dallas mine. There was only one mine engaged in the production of coal at the time the several fires occurred. This was Prairie Creek Mine No. 4. Whether the persons who destroyed the property at this mine were actuated by any intent to interfere with interstate commerce in coal obviously presents a different question from that presented by the fires at mines where such production was not taking place.

We submit that this misjoinder of parties plaintiff presents an error of the most substantial character. It deprived plaintiffs in error of submitting to the jury in a proper manner the different circumstances surrounding the different fires.

Moreover, the recovery of a lump-sum verdict in favor of all of the corporations named in the complaint has effectually prevented plaintiffs in error from determining the theory

upon which the jury awarded the damages and of whether, upon the question of damages, the verdict is supported by the evidence.

It is also argued that the question of misjoinder was not properly raised. As we showed in our main brief, it was raised by demurrer, by motion to strike out, and by motion for judgment notwithstanding the verdict. The objection of the defendants in error to the motion to strike out seems to be that they were entitled in any event to have one plaintiff and one cause of action left in the case. Whether this is so or not, it is not necessary to decide. In view of the fact that the action as set forth is a joint cause of action, the rule would seem to be that a demurrer to the cause of action would properly lie if the action were not joint, as alleged. But if defendants in error were entitled to have one cause of action and one plaintiff left in the case, this did not alter the fact that the plaintiffs in error were entitled to have the eight other plaintiffs and their causes of action stricken out. Defendants in error may not sustain the action of the trial court in refusing to strike out *any* of the causes of action, upon the ground that plaintiffs in error were not entitled to have them *all* stricken out, although, as above stated, since the action is set forth as a joint cause of action, this was the right of plaintiffs in error.

Nor do we concede, as stated on page 281 of the brief of defendants in error, that if this suit were brought in the Arkansas courts our contention as to misjoinder would be without foundation. On the contrary, we stated in our main brief that this misjoinder is not recognized as proper, even in the Arkansas State courts (pages 173, 174).

It may be added that, because of the controlling significance of the points we have emphasized, it has not seemed necessary to cover any other errors of the learned trial court

in our briefs. We desire to correct, however, the impression of defendants in error, stated on page 303 of their brief, that the other errors have been abandoned by us. This is not the fact.

The judgment should be reversed and the complaint dismissed.

Respectfully submitted,

CHARLES E. HUGHES,
HENRY WARRUM,
G. L. GRANT,
ALLEN S. HUBBARD,
Of Counsel for Plaintiffs in Error.

Minnesota State Library,
St. Paul, Minn.

In the Supreme Court of the United States.

OCTOBER TERM, 1919. No. 707.

United Mine Workers of America et al., *Plaintiffs in Error,*

vs.

Coronado Coal Company, et al.

MOTION TO ADVANCE FOR ARGUMENT.

Now comes the defendant in error in the above entitled cause pending before this Honorable Court on writ of error and petition for writ of *certiorari* issued and directed to the United States Circuit Court of Appeals for the Eighth Circuit, by his attorneys, Henry S. Drinker, Jr., and James B. McDonough, and respectfully represents:—

That for the reasons hereinafter set out, under the special and peculiar circumstances shown to the Court herein, the case presented by this writ of error is one which should be taken up out of order on the docket and advanced for argument in pursuance of Rule 26 of this Court.

Wherefore your petitioners pray that the above entitled cause may be advanced in accordance with the provisions of said Rule 26.

Respectfully submitted,

HENRY S. DRINKER, JR.,
JAMES B. McDONOUGH,
For Petitioner, Defendant-in-Error.

Minnesota State Library,
St. Paul, Minn.

STATEMENT SUR MOTION TO ADVANCE.

The judgment of the District Court, affirmed by the Circuit Court of Appeals, is for $625,000, based on a verdict of an Arkansas jury which involved a finding by them that the United Mine Workers, in the furtherance of its associate purpose to unionize all coal mines by preventing the operation of non-union mines and the transportation of their product to other states for sale in competition with union coal there mined, acting through its officers and members, deliberately blew up, burned and destroyed the petitiners' mines and tipples.

The Union contends that since it is not incorporated its associate funds are not answerable for the damage which it has thus caused.

The question which by the present petition this Court is asked to advance for decision is the liability of an unincorporated association to suit for damages under the Sherman Anti-Trust Act.

The case at bar is the first in which this question has been presented for decision.

The reason for the destruction by the United Mine Workers of petitioners' properties was the attempt, in the Spring of 1914, to operate one of them on the open shop principle, employing men who were not members of the Union as well as Union members.

A mob of some 1500 men collected at the mine, assembled and led by Union officials, broke through the inclosure, beat and seriously injured a number of the company's employees, drove the balance off the property, drew the fires from the boilers which operated the pumps, and hoisted on the tipple a banner bearing the inscription:

"This is a Union Man's Country."

The mines filled with water, doing very great damage which it took the company some months to repair.

An injunction having been obtained in the Federal Court,

the company gradually got the men back and pumped out the water, in spite of continued intimidations and assaults by Union members and officials.

No further general attack was made until July, when the company was again loading coal for interstate shipment.

During the night of July 16th, an army of Union men, led by the Union officers and armed with high powered rifles and ammunition purchased by the secretary of District 21 and paid for with the Union check signed by its President, surrounded the mines.

At daybreak they opened the attack and by noon had murdered several of the employees and driven the rest away.

They then deliberately dynamited the slopes and burned the buildings, doing actual physical damage which the issue of the United Mine Workers' Journal of July 23d, estimated at $200,000 and which a later issue, after investigation, stated as $500,000.

The International Constitution of the United Mine Workers makes the United Workers' Journal the official organ of the Association. It is published under the supervision of the International Executive Board, its editor being appointed by the International President.

In the issues of the Journal of July 23d and July 30th, the Journal gave a glowing account of the Union victory of July 17th, recognizing that the destruction of the mines was the work of the Union, done by its officials and members for its benefit, and applauding their actions.

"Bravo, Arkansas Coal Diggers," is the title of the article of July 30th.

Other later issues of this publication gave further details, recognizing that what had been done was done by the Union and for the benefit of the Union.

Undoubtedly the explanation of the extraordinary and brazen candor with which the official organ of the International Organization acknowledged such deeds as a Union activity, lies in the fact that until the decision of this case by the Circuit Court of Appeals, the Union officers rested under the absolute assurance that no matter how flagrantly the Union violated the law, neither it nor its associate

funds could be held responsible. The individual officers and members who themselves led the Union forces and set fire to and blew up the properties were not, like the Danbury Hatters, men of property. They could snap their fingers at a money judgment for the vast destruction which they had brought about.

The perturbation of the Union officials from the decision of the Circuit Court of Appeals, overuling their demurrer, and holding that an unincorporated Union is liable to suit for damages under the Sherman Act, is reflected in their petition to this Court of January, 1917, for writ of prohibition, in which they contend (Suggestions for Writ of Prohibition, pages 10-11), that unless the writ be granted and the District Court be advised that an unincorporated Union is not subject to suit, and its associate funds not subject to attachment for its associate wrongs, as are those of corporations and individuals, the "unified power and strength" of the Union will be destroyed, and it will be unable successfully to continue its activities.

After the destruction of their properties, the companies, all of whom were operated under the same management, were placed in the hands of a Receiver (of whom petitioner is the successor) who was directed to institute the present suit, under the Sherman Anti-Trust Act, against the International Union, District 21, and the various local Union and participating Union officers and members, to recover treble the damages sustained.

The greater part of the companies' holdings consisted of leaseholds, which the several lessors proceeded to forfeit by reason of the insolvency of the companies caused by the destruction of their physical properties, resulting in a further loss which the uncontradicted evidence fixed at from $475,000 to $525,000.

In the fall of 1914, the Union officers who had instigated and led the attack were indicted in the Federal Court for committing the very acts on which the present suit is based, in violation of the Federal injunction. **They pleaded guilty** and were find and imprisoned, their fines and counsel fees being paid by the Union.

During their imprisonment they received Union benefit allowances, and after their release they were continued or reinstated in their Union offices or promoted to offices of greater responsibility. In no case did the Union or any of its subordinate branches take any action whatever to expel, suspend, or discipline any of its officers or members who had confessed their participation in the unlawful acts.

The Union having demurred to the complaint in the present case, the District Court sustained the demurrer on the ground that the facts alleged did not constitute an interference with interstate commerce, but on appeal the Circuit Court of Appeals for the Eighth Circuit, in an opinion by Judge Adams in which Judges Sanborn and Carland concurred, this judgment was reversed, the Court holding that a violation of the Anti-Trust Act was alleged. The Court further held, overruling the second ground of demurrer, that an unincorporated Labor Union was a "person" within the meaning of Section 8 of the Act, which defined the word "person" as including "corporations and **associations existing under** or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any States, or the laws of any foreign country."

The basis of the opinion, which is reported under the title Dowd *vs.* United Mine Workers, 235 Fed. 1, is that for the purpose of responding in damages under the Sherman Act, Congress had personified the association, making its associate funds liable for damages caused by means of its illegal associate activities; in other words, that Congress had intended to do by the Sherman Act practically what this Court held it had done with regard to unincorporated associations by the Interstate Commerce Act:—

> "To charge the partnership assets with a liability and to personify the company so far as to collect a fine by a proceeding against it by the company name." U. S. *vs.* Adams Express Co., 239 U. S. 381, 390.

After ineffective applications to this Court for writs of *certiorari* and prohibition the case finally came to trial in October, 1917, before Judge Elliott, and after a trial of five weeks, the jury rendered a verdict of $200,000, which was somewhat less than one-third of the amount of the undisputed damages proved. This amount was automatically trebled by the Court, which also added interest from July 17, 1914, to the date of the verdict.

On appeal to the Circuit Court of Appeals, the addition of interest was held error and subsequently was remitted by the complainant. The main judgment was sustained, the opinion being delivered by Judge Trieber and concurred in by Judge Sanborn. Judge Hook dissented on an assignment based on an alleged error in the charge, but concurred in overruling all the eighteen remaining grounds (covered by 181 assignments of error) on which the main judgment was attacked, including the liability of the Union to suit.

United Mine Workers *vs.* Coronado Coal Company, 258 Fed. 829.

The Union has taken a writ of error and has also filed a petition for writ of *certiorari* to bring the record before this Court.

The Question Presented.

The numerous questions of Arkansas practice, of agency of evidence and of jurisdiction, presented in this case would not, standing alone, be of such immediate or general interest as to warrant an application to this Court to advance the case.

The main question presented—the liability of an unincorporated labor union to suit for damages under the Anti-Trust Act—is of such supreme national importance, particularly at the present time, that it is respectfully submitted that the case should be advanced so that this question may be determined finally without the delay which

will result from the case taking its regular place on the list.

The position of the Union is that, no matter how outrageously it may violate the law, no matter how completely and effectively it may restrain interstate commerce, acting as a unit, as an association, and employing its vast collective power and resources illegally to destroy life and property, for the sole purpose of furthering the collective interest of the association, burning and dynamiting the means of producing the necessities of life in order to prevent them from coming into interstate competition with articles produced under Union domination, yet these same Union funds which were used to cause the damage cannot be made to pay for it, simply because the association refuses to become formally incorporated.

Persons injured by the Union must, it is said, sue the various irresponsible laborers whom it employed to do the damage, while the vast power and resources behind it all remain intact for further activity.

The present case is the first in which this question has been presented for decision.

The question is not the broad one of the liability of an unincorporated Union to suit at common law, but merely that of the proper construction of the Anti-Trust Act.

If the United Mine Workers of America, with its 500,000 solidly organized members, were the only labor organization, the situation would be serious enough.

The United Mine Workers, however, is merely one of the many Labor Organizations which have suddenly awakened to the realization of their enormous power, which they are proceeding to exercise in disregard of the rights of their fellow men, at the same time disclaiming all associate responsibility.

The organization of the United Mine Workers is so framed that its power is centralized to the highest possible degree, its President having practically unlimited control of all its vast resources,—its monthly income runs into the hundreds of thousands and its cash in bank into the millions—and of the activities of its 500,000 members.

The International Association consists of three strata, the local Union, the District Branches and the International Association.

The latter is not, however, a mere confederation of the locals or districts. It is formed not from the bottom up, but from the top down.

By the international constitution the districts and locals are mere agencies created by the main organization, chartered by the International President or Executive Board and subject at all times to their control.

Article III of this constitution provides as follows:—

"ARTICLE III.

"Jurisdiction.

"SECTION 1. The International Union shall be composed of workmen eligible for membership in the United Mine Workers of America, and may be divided into Districts, Sub-Districts and Local Unions.

"SEC. 2. All Districts, Sub-Districts and Local Unions must be chartered by and shall be under the jurisdiction and subject to the laws and rulings of the International Union."

In actual practice, as shown by the uncontradicted evidence in the case at bar (the Journal), it has frequently happened that the charters of both local unions and district and sub-district branches have been suspended or annulled by the International President or Executive Board, and their funds turned in to the International Treasurer.

This organization is one, therefore, having the highest centralized power, capable of and productive in the past of great good, both to its members and to the community, but at the same time capable of great and terrible wrongs, one of which it has inflicted on the petitioner in violation of a statute of the United States..

According to the contention of the Union in this case—acclaimed by its sister organizations throughout the coun-

try as essential to their success and progress—there is no degree of effective unified action which such an unincorporated association may attain in order to render its associate funds liable for the unlawful injuries which, in its associate capacity and to attain its associate ends, it may inflict on other people.

These Unions are in fact organized in a form far more effective for unified action than is the case with most corporations.

They have innumerable delegated officers, with deputies subject to their exclusive direction, all agencies of the main organization employed solely to do its bidding in the furtherance of its interests.

They have vast funds, which in the hands of unscrupulous men may be devoted exclusively to harming innocent people by restraining and destroying interstate trade, and yet these injured citizens must rely for their remedy on the financial responsibility of the irresponsible and for the most part misguided members, who do the actual burning, killing and destruction, provided the victims can prove exactly which particular member did the damage.

During the past six years the world has learned the frightful efficiency which can be achieved by such complete centralization of power.

It has also learned how the national or class consciousness of such an organization may be moulded by its leaders when unchecked by a sense of responsibility to others, to the belief that their sole guiding principle may properly be the immediate material prosperity of the group and the enhancement of the influence of its leaders, without regard to the rights of outsiders.

Power without responsibility has always, since history began, taken the same course—prosperity of the favored group, exaltation of its leaders, oppression of the many by the few, revolt of the oppressed, chaos and suffering for all.

The formation of the Labor Unions and their attainment, by collective action, of power sufficient to enable them to protect the rights of their members against their employers,

was a necessary and most beneficent development in the social organization of modern industry.

Until recently they did not attain power sufficient to menace the rest of the community.

During the past two years they have come to a realization of their enormous power.

Encouraged by their easy victories, not only over industrial chieftains, but over legislators, they have naturally been led to the conclusion that by determined group action they can secure whatever they desire, and that if this results in injury and suffering to others it does not matter and can result in no harm to them or serious liability on their part.

This attitude and belief is growing stronger every day.

It began with the riders to the Congressional appropriations acts forbidding the use of funds appropriated for the prosecution of Labor Unions under the Sherman Act.

It grew with the passage of the Adamson Act.

It came to its full fruit in the Boston police strike, the coal strike, the steel strike, the longshoremen's strike and the hundreds of lesser strikes which during the past year have prevented the industrial reorganization of the country.

Not that in the case of many of these strikes there have not been just grounds for complaint by the workmen. It is not in the fact of these disturbances or in the losses entailed thereby that the danger lies, but in the attitude and consciousness which has been engendered thereby,—the realization of power without responsibility.

Unless some cure be found, the past and present troubles will be nothing compared with those to come.

The first step is the realization by the Labor Unions of full social responsibility.

This can never be attained if they and their resources are exempt from legal liability for injuries unlawfully inflicted by them.

While the labor leaders of this country, in order to preserve their jobs and to ensure the support of the radical

element in their ranks, are compelled to cry out and fight for freedom from such responsibility, it is believed that such of them as really have at heart the ultimate welfare of their class would be glad to have this unscrupulous element realize that their development must be effected in subordination to the rights of the community.

Far seeing men must understand that the capacity of the Labor Unions for usefulness to their members and to the country, far from being hampered, will be greatly enhanced and prolonged if, with their enormously waxing membership, wealth and power, they are compelled to accept a degree of responsibility for wrongdoing.

The laboring class can never really prosper without the confidence of the rest of the people.

Now that it has come to act as a group it can never secure that confidence until it assumes group responsibility.

The seven Federal judges who have heard this case (Judges Youmans, Elliott, Sanborn, Adams, Carland, Trieber and Hook) have unanimously decided that the associate funds of a Labor Union employed to restrain interstate commerce, are liable under the Anti-Trust Act for the damages caused thereby.

The Union has denied such liability and claims to be exempt from such liability and responsibility.

The country should know, and know soon, whether under the law such liability exists or whether it does not.

The decision of the Circuit Court of Appeals is not the final judgment of the law of the land and is not recognized as such by the Unions or by the people.

If, as we are entirely confident, this decision is affirmed by this Court, the country will be told by the highest Court in the land that no class is above the law.

If, on the other hand, this Court should hold otherwise, if the law of the land is that there is a class of organization, capable of great good but also of the greatest and most disastrous harm, free to use its combined effectiveness in the restraint and destruction of interstate commerce with impunity, then Congress, which passed the Sherman Anti-

Trust Act should be promptly so advised, in order that, by proper legislation, it may bring all the people of the country, and all combinations of the people, alike subject to the law.

HENRY S. DRINKER, JR.,
JAMES B. McDONOUGH,
For Petitioner, Defendant-in-Error.

ROGER B. HULL,
Of Counsel.

Minnesota State Library,
St. Paul, Minn.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

UNITED MINE WORKERS OF AMERICA *et als.*, Plaintiffs-in-Error, against CORONADO COAL COMPANY *et als.*, Defendants-in-Error.	No. 239.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Brief Filed by Daniel Davenport, Walter Gordon Merritt and Thomas Hewes, as Amici Curiae, by Leave of Court.

This is an action for treble damages under Section 7 of the Sherman Act of July 2nd, 1890. The defendants include the United Mine Workers of America, a labor union and a voluntary association, and numerous subdivisions of the United Mine Workers of America, which are also voluntary associations, in addition to various individuals.

It is conceded that under the common law a voluntary association cannot sue or be sued in its own name in an action at law. The question is whether this rule has been altered by statute in a case of this character. Section 7 of the Sherman Act provides that "any person who shall be injured in his business or property by any other person or corporation," etc., may sue therefor, and Section 8 provides "that the word person or persons wherever used in this Act shall be deemed to include corporations and *associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country.*"

We join in the contention of the plaintiff that the United Mine Workers of America and the other voluntary associations sued as defendants herein come within the statutory definition of "associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state * * *."

The record discloses, as does also the case of *Hitchman Coal & Coke Co.* v. *Mitchell,* 245 U. S., 229, the essential characteristics of the United Mine Workers of America: A membership of over 400,000; representative conventions like stockholders' meetings as the source of power; the election of executive officers and an executive committee chosen from the districts, who in the interim between conventions administer its affairs and wield the enormous strength of this body; a name in which it does business; a central office; an official magazine; a complete system for collecting dues; a large income and accumulated wealth freely spent in furthering the ends of the union, and numerous unlawful acts resulting in great injury to the plaintiff.

Incorporation of this body would not require it to alter in any substantial way its present organization. It is a complete working machine, having all the earmarks of an entity entirely apart from its members and is so acting. Can it be thus sued under the statute? The consideration of a few elementary principles of jurisprudence would seem to require an affirmative answer.

The Sherman Law creates rights and imposes duties. It gives to persons and the public the right to be free from injury through unlawful restraints of trade and imposes the duty on persons to refrain from so causing injury. The evidence shows clearly that the defendant union, acting in its organized capacity, as an entity, can and has successfully restrained trade and has deliberately ruined the plaintiff. It has common funds from which damages can be collected. It should be made to pay. It is clearly an entity apart from its members. Common sense declares this, economic facts declare it, the law should declare it.

Pollock—First Book of Jurisprudence, 2nd Ed., pp. 110, 111, 114.

Wald's Pollock on Contracts, 3rd Ed., by Williston, p. 124 *et seq.*

15 *Harvard Law Review,* p. 311.

Holland—Jurisprudence, 11th Ed., pp. 80, 82, 87, 88, 91, 93, 96, 97, 335, 336, 337.

Taff Vale Ry. Co. v. *Amalgamated Society,* 1901 A. C., 426.

Brent et al. v. *New Orleans,* 6 So., 793 (La.).

In the case of *Walworth* v. *Holt*, 4 Myl. & Cr., 619 (1841), the Court said:

> "I think it the duty of this Court to adapt its practice and course of proceeding to the existing state of society and not by too strict an adherence to forms and rules, established under different circumstances, to decline to administer justice and to enforce rights for which there is no other remedy."

It is not necessary that legal systems shall create artificial persons. The ideals and necessities of mankind recognize them before the law.

> *Pound—Readings on the History and System of the C. L.*, p. 448, from *Gareis—Science of Law*, sec. 15.

This statement is a convenient explanation of the theory of lost charters described by Blackstone when discussing the necessity of sovereign recognition for common law juristic persons.

It is undoubtedly true that the common law for a long time knew of but two classes of legal persons —natural persons and artificial persons. The only artificial person recognized was the corporation.

> *Coke Litt*, 2-a.
> *Blk. Comm.*, Vol. 1, pp. 123, 467 *et seq.*

A careful examination of many authorities fails to disclose any particularly illuminating explanation of this fact except this: In the early days of Rome no sovereign permission was necessary to create a so-called corporation with its distinct feature of immortality, but later such bodies were looked upon with extreme disfavor unless they had been

officially approved by the state. The state felt it necessary for self-protection to exercise control over bodies of individuals who might acquire vast and even rival power. And this principle, though not at first recognized in England, likewise in time became the law.

Holdsworth—History of the English Law, Vol. III, pp. 362, 373.
Pollock and Maitland, History of English Law, Bk. II, Chap. II, sec. 12.
Taylor—Science of Jurisprudence, p. 580 *et seq.*
Markby—Elements of Law, p. 82 *et seq.*
Lloyd v. *Loaring,* 6 Ves., 773.

The power of the sovereign in thus exercising control was made effective through the passive means of refusing to recognize in unincorporated bodies either rights or duties. But voluntary associations continued to grow in number and because of their dynamic activity in society it became absolutely essential in the administration of justice to make them amenable to legal process, and so the chancelor invented the representative action and in the courts of equity for 200 years they have sued and been sued, have enforced rights and been compelled to respect duties.

Meux v. *Maltby,* 2 Swan., 277.

The remarks of Story are illuminating:

> "The general rule in equity (is) that all persons legally or beneficially interested in the subject-matter of a suit should be made

> parties * * *. All the exceptions will be found to be governed by one and the same principle, which is, that as the object of the general rule is to accomplish the purposes of justice between all the parties in interest and *it is a rule founded in some sort upon public convenience and policy, rather than upon positive principles of municipal or general jurisprudence,* courts of equity will not suffer it to be so applied as to defeat the very purposes of justice, if they can dispose of the merits of the case before them without prejudice to the rights or interests of other persons who are not present."
>
> *Story—Equity Pleadings,* 8th Ed., Sec. 77.

And so Congress, in Compiled Stat. 1918, Sec. 1, first as to partnership and later in the laws relating to the National Defense, Internal Revenue, Foreign Relations, Interstate and Foreign Commerce, Monopolies, Rivers, Harbors and Canals and Telegraphers, has included in its definition of "person," now in one manner, now in another, partnerships, companies and voluntary associations.

> Secs. 3115 1/16 a, 3115 1/16 d, 3115 1/8 c c etc., 5842, 7628 b, 8763, 8830, 9967, 10096.

Therefore it seems historically that the state began by refusing to recognize associations, and when this did not stop their growth, looked to their regulation and supervision by giving them juristic personality.

> 30 *Harv. Law Rev.*, 683-684.

The inevitable revulsion of justice against the archaic rigidity of the common law theory is found

in the opinion of Lord Lindley in the *Taff Vale* case (*supra*), where he says, page 443:

> "The principle on which the rule (of equity) is based forbids its restriction to cases for which an exact precedent can be found in the reports. The principle is as applicable to new cases as to old and ought to be applied to the exigencies of modern life as occasion requires. * * * I have myself no doubt whatever that if a trade union could not be sued in this case in its registered name, some of its members, namely its executive committee, could be sued on behalf of themselves and the other members and an injunction and judgment for damages could be obtained in a proper case in an action so framed."

To cure this legal anachronism by adopting our construction of the Anti-Trust Law would not involve any change in substantive law. In many of our states statutes have been passed allowing trade unions to sue and be sued in their common name. These statutes are concerned solely with adjective law. They merely square the law with economic facts. In the field of realities the existence of the union is perforce recognized as an entity, with rights and duties.

The question of the right to sue an association is purely formal and procedural (*Saunders* v. *Adams Express Co.*, 71 N. J. Law, 270; *Mayhew & Isbell Lumber Co.* v. *Valley Truck Growers' Assoc'n*, 216 S. W., 225, Tex.; *Taff Vale Ry. Co.* v. *Amalgamated Society* [1901], A. C., 426). It does not alter duties or rights (*Taff Vale* case, pp. 438, 442-445; *Huth* v. *Humboldt*, 61 Conn., 227). It is held in some cases that unless the question of the suability of an asso-

ciation is raised by demurrer it is waived (*United Mine Workers* v. *Cromer*, 167 S. W., 891, Ky.; *Agricultural Club* v. *Hirsch*, 179 Pac., 430, Cal.). Where an unincorporated association appears and answers as an entity and is named in an injunction order, it can thereafter be punished for contempt as an entity (*Barnes* v. *Chicago Typo. Union*, 232 Ill., 402; 14 L. R. A. [N. S.], 1150). Such a question cannot be raised for the first time on appeal (*Iron Molders Union* v. *Allis-Chalmers*, 166 Fed., 45).

These cases are cited not with a view to claiming that defendants have waived their rights, but in support of the contention that the question is purely a technical one as to the form of a writ and not one of substantive law. Therefore it is submitted that language far less clear than that of the Anti-Trust Law would be sufficient to force such a conclusion as we here urge and that a court of law should readily seize upon any opportunity to accomplish this just result which courts of equity have long since accomplished. It would need no very compelling language for a court to find that Congress intended to cure a formal and procedural defect in the common law so as to make the industrial remedy it prescribes effective and adapted to the industrial conditions of the time.

Every argument of public policy is in favor of our contention. In these days when associations of employers and associations of workmen, acting as a unit under a constitution and by-laws, electing officers and controlling large funds, perform practically all the functions of a corporate entity and exercise a power for good or ill far beyond that of individuals, there is every reason why Congress, when dealing with their most familiar activities, should be presumed to have brought them within

the reach of civil process. Collective responsibility should accompany collective action. As was said in the *Taff Vale* decision, if this principle is denied, injured parties are without a remedy because of the impracticability of enforcing the law against the numerous members of associations. If any fair construction of the statute will permit, it is the duty of the court to declare that Congress intended to avoid such an unfortunate result. Law exists for society and the instincts of right and wrong must be given effect by the courts wherever reasonable interpretation of law and laws permit.

> "The protection of society makes it imperative that the group be subject as such to duties and duties distinct from those imposed on its component members because the group is often infinitely more formidable than the sum of its members."
>
> 30 *Harvard Law Rev.*, 680.

The anti-trust statute was enacted primarily to protect the public in the enjoyment of the benefits of the free flow of commerce. It granted such protection against combinations of employees (*Loewe* v. *Lawlor,* 208 U. S., 274) as well as combinations of employers, and to that end is presumed to have brought within the clutches of the law voluntary associations of employers and employees, which are the commonest instrumentalities by which restraints of trade are accomplished. When we consider the nature of the mischief which the statute aimed to remedy, the comprehensive remedies provided, and the fact that an important part of the remedy lay in controlling associations, there is every reason to believe that the words, "associations existing under or authorized by the laws, etc.," in-

tended to include the ordinary and familiar type of associations of employers and employees which were largely the cause of that mischief. To reach a contrary conclusion we must declare what to-day sounds amazing—that labor unions do not exist under, and are not authorized by, the laws of any state or of the United States. How absurd it would be to impute to Congress an intention to include combinations of employees and to keep out of reach of civil or criminal process those institutions which are entities in fact and the sole agencies whereby employees restrain trade. How strained it is to say that Congress intended this result when it took care to enumerate all associations *existing under any state or federal law*. How unwarranted such a conclusion would be when it runs counter to the needs of society and negatives the rule that where there is a right there is a remedy, as so conspicuously shown in this case. The statute can be naturally construed and should be construed to remove a technical obstacle to the administration of justice.

The aptness of the words used by Congress as applied to labor unions is emphasized by the extent to which unions have been recognized and have received benefits and privileges through federal and state enactments. These statutes show to what a surprising extent unions "are associations existing under and authorized by" state and federal laws.

Nineteen states and one territory have statutes for state boards of arbitration, which provide for representation of labor interests on the board either through appointment by labor unions or after consultation with labor unions or from the membership of labor unions.

The following states provide that unions shall take part in the selection of representatives on the boards of arbitration:

Iowa—Acts of 1913, Chap. 292, Secs. 1, 2.
Louisiana—Revised Laws 1897, Act 139 of the Acts of 1894, Sec. 1.
Minnesota—Revised Laws, 1905, Sec. 1828.
Alabama—Acts of 1911, p. 320, Sec. 6.
Nevada—Revised Laws 1912, Sec. 1930.
Alaska—Acts of 1913, Chap. 70, Sec. 2.
Indiana—Annotated Statutes 1901, Sec. 7050 e, f.
Idaho—Revised Code 1909, Secs. 1430, 1431.
Nebraska—Revised Statutes 1913, Sec. 3638.
Texas—Revised Civil Statutes 1911, Art. 71.

Resolution No. 15, passed February 20, 1917, by State of Oregon, creates a special commission and specifies that the president of the State Federation of Labor shall be one of its members.

The following states provide that one of the representatives on the arbitration board shall be a member of a labor union:

Connecticut—Gen. Stat. 1902, Sec. 4708.
Massachusetts—Acts of 1909, Chap. 514, Sec. 10.
Maine—Acts of 1909, Chap. 229, Sec. 2.
New Hampshire—Acts of 1911, Chap. 198, Sec. 3, as amended by Chap. 186, Acts of 1913.
Vermont—Acts of 1912, Act No. 190, Sec. 1.
Missouri—Rev. Statutes of 1909, Sec. 7802.
Montana—Revised Code 1907, Secs. 1670, 1671.
Nebraska—Revised Statutes 1913, Sec. 3633.
Utah—Compiled Laws 1907, Sec. 1324.
South Carolina—Acts of 1916, Act No. 545,

Sec. 8.

Illinois—Hurd's Rev. Stat. 1906, Chap. 10, Sec. 19.

Indiana—Ann. Stat. 1901, Sec. 7050 b.

Idaho—Rev. Code 1909, Sec. 1427.

Oklahoma—Rev. Laws 1910, Sec. 3707, provide that the president or chief executive of every labor organization shall communicate the facts of any strike or lockout to the board of arbitration.

Illinois—Act of 1917, page 4, Sec. 7, provides that "of the five Illinois employment office advisors * * * two (shall be) representatives of organized labor."

The Transportation Act 1920, Sections 302-307, recognizes organizations of employees in the creation of railroad boards of adjustment and provides that the adjustment board shall take action upon the application of a carrier or organization of employees. The Act 1913, Chapter 6, also recognized labor organizations.

The Act of Congress August 23rd, 1912, creating a commission on industrial relations provided that three of the commissioners should be representatives of organized labor.

Over forty states have laws protecting trade union labels from infringement and many of these permit an association to bring suit in its own name. The list of these laws and the full text of a typical one will be found on pages 81-82 Bulletin of the United States Bureau of Labor Statistics, covering labor laws of the United States, whole No. 148.

The list as set forth in the Bulletin is as follows:

Alabama—Code of 1907, Secs. 7322, 7323.

Arizona—Penal Code, Secs. 314 to 318.

Arkansas—Acts of 1905, Act. No. 309 (amended by Chap. 131, Acts of 1909).

California—Political Code of 1906, Secs. 3200, 3201; Penal Code of 1906, Secs. 349-a to 351 (amended by Chap. 181, Acts of 1911).

Colorado—Mills' Supplement of 1904, Secs. 2985-l to 2985-s.

Connecticut—General Statutes of 1902, Secs. 4907 to 4912 (amended by Chap. 151, Acts of 1907).

Delaware—Acts of 1899, Chap. 266.

Florida—General Statutes of 1906, Secs. 3169 to 3172.

Georgia—Code of 1910, Secs. 1989 to 1992.

Idaho—Revised Codes of 1908, Secs. 1449 to 1455.

Illinois—Rev. Stat. of 1905, Chap. 140, Secs. 1 to 7.

Indiana—Annotated Statutes, Revision of 1901, Secs. 8693 to 8703; Acts of 1905, Chap. 169, Sec. 685.

Iowa—Code of 1897, Secs. 5049 to 5051.

Kansas—Gen. Statutes of 1909, Secs. 9675 to 9680.

Kentucky—Statutes of 1903, Secs. 4749 to 4755.

Louisiana—Acts of 1898, Act No. 49.

Maine—Revised Stat. of 1903, Chap. 40, Secs. 30 to 36.

Maryland—Public General Laws of 1903, Art. 27, Secs. 43 to 48.

Massachusetts—Revised Laws of 1902, Chap. 72, Secs. 7 to 14.

Michigan—Compiled Laws of 1897, Secs. 11681 to 11686 (amended by Chap. No. 279, Acts of 1913).

Minnesota—Revised Laws of 1905, Secs. 5072 to 5076.

Missouri—Rev. Stat. of 1909, Secs. 11789 to 11796; Acts of 1913, pp. 763 to 765.

Montana, Penal Code of 1907, Secs. 8452 to 8457.

Nebraska—Code of 1911, Secs. 6944 to 6951.

Nevada—Rev. Laws of 1912, Secs. 4635 to 4637, 6691 to 6694.

New Hampshire—Acts of 1895, Chap. 42.

New Jersey—Compiled Stat. of 1910, pp. 1802, 5643 to 5648.

New York—Consolidated Laws of 1909, Chap. 31, Secs. 15 to 16.

Ohio—General Code of 1910, Secs. 6219 to 6227, 13102, 13103, 13153 to 13155; Acts of 1911, p. 420.

Oklahoma—Revised Laws of 1910, Secs. 8211 to 8217.

Oregon—Annotated Codes and Statutes of 1902, Secs. 1841 to 1848.

Pennsylvania—Brightley's Digest, 1893-1903, p. 850.

Rhode Island—General Laws of 1909, Chap. 196.

South Dakota—Political Code, 1903, Secs. 3190 to 3195.

Tennessee—Acts of 1905, Chap. 21.

Texas—Revised Civil Statutes of 1911, Arts. 705, 706; Revised Criminal Code, Arts. 1395, 1396.

Utah—Compiled Laws of 1907, Secs. 2720 to 2723, 4482, 4483.

Vermont—Public Stat. of 1906, Secs. 4962 to 4967; Acts of 1908, No. 121.

Virginia—Code of 1904, Sec. 1906-d.

Washington—Codes and Statutes, 1910, Secs. 9492 to 9500.

West Virginia—Acts of 1901, Chap. 5.
Wisconsin—Statutes of 1911, Sec. 1747-a.
Wyoming—Compiled Statutes of 1910, Secs. 3439 to 3444.

In a number of states and municipalities statutes or ordinances have been enacted requiring all public printing to bear the union label.

Maryland—Public General Laws, 1911, Art. 58, Sec. 9.
Montana—Revised Code 1907, Sec. 254.
Nevada—Revised Laws 1912, Sec. 4309.
Miller v. *Des Moines,* 122 N. W., 226 (Iowa).
Patterson Chronicle v. *Mayor of Paterson,* 66 N. J. Law, 129.
Atlanta v. *Stein,* 36 S. E., 932 (Ga.).
Adams v. *Brenan,* 52 N. E., 314 (Ill.).
Helden v. *Alton,* 53 N. E., 556 (Ill.).
Fiske v. *People,* 58 N. E., 986 (Ill.).
Marshall & Bruce v. *City of Nashville,* 109 Tenn., 495.

Section 23 of the New Jersey Comp. Statutes of 1910 provides that all municipal advertising required by law in cities having a population of 50,000 or over shall be made in newspapers specially devoted to organized labor in addition to the regular newspaper authorized by law.

The statutes in many states make it unlawful for anyone falsely or without authorization to use the labor union card, badge or insignia.
California—Acts of 1909, Chap. 331.
Connecticut—Acts of 1907, Chap. 113.
Massachusetts—Acts of 1909, Chap. 514, Sec. 32.

Minnesota—Revised Laws 1905, Sec. 5053.

Montana—Revised Code 1907, Sec. 8866.

New York—Consolidated Laws 1909, Chap. 40, Sec. 1278.

Ohio—General Code 1910, Sec. 13163.

Oregon—Acts of 1911, Chap. 73, Sec. 1.

Pennsylvania—Brightley's Digest, 1893-1903, p. 102, Sec. 3.

Texas—Revised Crim. Statute 1911, Art. 425.

Virginia—Acts of 1908, Chap. 54, Sec. 1.

The statutes of some states expressly deal with the embezzlement of union funds.

Nebraska—Revised Statutes 1913, Sec. 8659.

New Hampshire—Public Statutes 1891, Chap. 273, Sec. 17.

Pennsylvania—Digest 1894, p. 2017, Sec. 9.

The statutes of some states make it a crime to bribe representatives of a union.

Nevada—Rev. Laws 1912, Sec. 6794.

New Jersey—Acts of 1911, Chap. 94, Sec. 1.

New York—Cons. Laws 1909, Chap. 40, Sec. 380.

Many states legalize the normal activities of labor organizations by specific provisions to that effect or by exempting them from the anti-trust laws and restricting legal procedure against them or by other methods.

Exemption from anti-trust laws:

California—Acts of 1909, Chap. 104, Sec. 13.

Louisiana—Act No. 90, Acts of 1892, Sec. 8; see Revised Laws 1897, p. 205.

Michigan—Compiled Laws 1897, Sec. 11382.

Montana—Revised Code 1907, Sec. 8289; Acts of 1909, Chap. 97, Sec. 2.

New Hampshire—Laws 1917, Chap. 177, Sec. 7.

Wisconsin—Stat. of 1911, Sec. 1747-h.

Other states reach the same conclusion by decision of the courts.

Arkansas ex rel. Moose v. *Frank*, 169 S. W., 333 (Ark.).

Cleland v. *Andersen*, 92 N. W., 306; 5 L. R. A. (N. S.), 136.

Rolfs v. *Kasemeier*, 118 N. W., 276 (Iowa).

State v. *Employers*, 169 N. W., 717 (Neb.).

Legalization of labor unions and labor combinations:

California—Penal Code 1906, p. 581.

Colorado—Rev. Stat. 1908, Sec. 3924.

Maryland—General Laws 1911, Art. 27, Sec. 33.

Massachusetts—Chap. 728, app'd July 7, 1914.

Minnesota—Chap. 493, approved April 21, 1917.

Nevada—Revised Laws 1912, Sec. 6801.

New Jersey—Comp. Stat. of 1910, Sec. 128.

New York—Consolidated Laws 1909, Chap. 40, Sec. 582.

North Dakota—Revised Code 1905, Sec. 8770.

Oklahoma—Revised Laws 1910, Sec. 3764.

Pennsylvania—Digest 1894, p. 484, Sec. 72, p. 2017, Secs. 1 to 5.

Texas—Revised Civil Stat. 1911, Arts. 5244 to 5446.

Utah—Chap. 68, approved March 8, 1917.

West Virginia—Acts of 1907, Chap. 78, Sec. 19.

United States Clayton Act. Oct. 1914, Sec. 6.

A number of federal statutes provide that funds appropriated shall not be used to prosecute unions under the anti-trust laws (Act of Congress, August 1st, 1914).

Some twenty states have laws aiming to protect employees from discrimination as members of a labor union. Reference to all of these is to be found in the cumulative index on page 157 of Bulletin of the United States Bureau of Labor Statistics No. 257, covering labor legislation of 1918.

A number of laws dealing with collective insurance expressly recognize and provide for labor unions as an agency whereby this may be done.

New Jersey—Comp. Stat. 1910, Chap. 191, Sec. 116.

Maine—Acts of 1919, Chap. 207.

Other laws exempt labor organizations from statutes relating to beneficial associations.

Kansas—Gen. Stat. 1909, Sec. 4194.

Massachusetts—Acts of 1909, Chap. 514, Sec. 30.

In *South Carolina,* Act No. 393, passed February 26, 1914, expressly authorizes labor organizations to carry on relief work.

In *Massachusetts* savings banks are required to report the number and amount of deposits of labor unions (Laws of 1915, Chap. 62, approved March 12, 1915).

Another Massachusetts act expressly legalizes the imposition of fines by labor unions (Mass. Acts of 1911, Chap. 431).

A considerable number of states provide means whereby unincorporated associations may sue or be sued.

Alabama—Act of Special Session 25, August, 1909, permits suit against voluntary associations

which issue policies or certificates of insurance of any kind to their members.

California—Code of Civil Procedure, Sec. 578 (see *Camm* v. *Justice's Court of Santa Rosa,* 170 Pac., 409).

Connecticut—General Stat., Revision of 1918, Sec. 5611.

Kentucky—Sec. 25, Civil Code Prac. (*Payne* v. *McClure Lodge,* 115 S. W., 764; 132 Ky.,).

Maryland—Public General Law, Art. 23, Sec. 301.

Michigan—Public Acts of 1897, Act. No. 25, Sec. 1.

Minnesota—Gen. Stat. 1894, Sec. 5177 (see *Taylor* v. *Railway Conductors,* 89 Minn., 222).

Montana—Revised Codes, 6497 (see *Vance* v. *McGinley,* 39 Mont., 46).

Nevada—Revised Laws 1912, Chap. 1, Sec. 65 (see *Branson* v. *Industrial Workers,* 30 Nev., 270).

Nebraska—Rev. Stat. 1913, Chap. 3, Sec. 610.

New Jersey—Revision of 1903, Sec. 40, p. 4064 of Comp. Stat.

New York—Sec. 1919, Code of Civil Procedure.

Ohio—Rev. Stat. 5008 (see *Platt* v. *Colvin,* 50 Ohio St., 703).

Rhode Island—Gen. Laws, Revision of 1909, Title 31, Chap. 300, Sec. 30 (see *Local Union* v. *Barrett,* 19 R. I., 663).

South Carolina—Civil Code, Chap. 51, Sec. 3336.

Vermont—Public Stat. 1906, Title 12, Chap. 71, Sec. 1448.

Virginia—Acts of 1916, Chap. 449.

Texas—Vernon Sayles' Annotated Civil Statutes 1914, Art. 6149.

Ten or more states have enacted laws permitting labor unions to incorporate.

Iowa—Code of 1897 and Supplement of 1907, Secs. 1642 to 1643.

Louisiana—Revised Laws 1897, Sec. 677; Act No. 50, Acts of 1890, p. 136.

Massachusetts—Revised Laws 1902, Chap. 125, Secs. 13-16.

Michigan—Compiled Laws 1897, Secs. 7451-7459.

Nebraska—Rev. Stat. 1913, Sec. 610.

New York—Consolidated Laws 1909, Chap. 3, Sec. 7.

Ohio—General Code 1910, Sec. 176.

Pennsylvania—Digest 1894, p. 2017, Secs. 1 to 11.

Texas—Rev. Civil Stat. 1911, Art. 1121, Sec. 48.

Wyoming—Comp. Stat. 1910, Secs. 4186 to 4187.

United States—Act of Congress, June 29, 1886.

Acts of Congress 1909, Chap. 6, Sec. 38, and Acts of 1913, Chap. 16, Subdiv. G-a, expressly exempt labor unions from excise taxes.

The legality of labor unions of postal employees is expressly recognized by Acts of Congress 1911, Chap. 389, Sec. 6, and the Clayton Act in Sec. 6 expressly recognizes their existence and legality.

During the war, and immediately thereafter, these organizations have been recognized by the Government as existing agencies when appointments on public commissions were considered, and this particular union was so recognized by the appointment of John P. White, its president, to the Fuel Administration.

This resume of laws of the United States and the states relating to labor unions is not supposed to be exhaustive either as to the variety or number of such laws, but is sufficiently complete to show the general extent to which labor unions have been

recognized and fortified by such statutes. With this array of statutes is it not unreasonable to claim that in this country labor unions do not exist under and are not authorized by any law of the United States or any law of any state? In fact, we can go much further: Labor unions are not only expressly recognized by the laws of the United States, but in the words of *Eliot* v. *Freeman* (*infra*), they are deriving from the statutory source qualities and benefits unknown to the common law. Their union labels, union cards and insignia are protected, their funds are guarded against embezzlement, the honesty of their officers' acts is safeguarded against bribery, their recognition on arbitration boards is a matter of compulsion, their existence and normal activities are expressly sanctioned, in many instances they can be sued in state courts, they have the opportunity to incorporate, etc. Surely they exist under *many* federal and state laws, and if they exist under a single law of any one state it is sufficient. It is not necessary that they be chartered or specially organized or franchised under some particular statute, but only that they *exist* under the statute, and these associations not only exist under, but derive rights, privileges and protection under numerous statutes. Under such circumstances it is not necessary for us to raise the question as to whether existence under the common law would be sufficient.

The defendants contend that the words of the statute only include associations *organized under* the express provision of some statute. If that were so, why did the legislators not stop with the words *"authorized by"* instead of also providing for associations "existing under" the laws? But authority as well as reason oppose the contention that the

words used in this statute are limited to associations *organized under* some statute. In the construction of our revenue laws just the contrary has been held.

In the case of *Eliot* v. *Freeman*, 220 U. S., 178, the court had before it the meaning of the words "associations organized for profit and having a capital stock * * * now or hereafter organized under the laws of the United States or of any state," etc. The court pointed out the difference between language which referred to associations "organized under the laws of the United States," and language which referred to associations "under the laws of the United States," and held that the former language which was the wording of the statute in question in that case, was limited to associations which are the "creation of statutory law" and "derive from that source some quality or benefit not existing at common law."

As a result of this decision the income tax statute of 1913 was worded (Sec. II, G-a) to include "associations * * * organized in the United States, no matter how created or organized."

The Sherman Anti-Trust Law by like reasoning does not limit its application to those associations of which joint stock associations are the only example which are organized under some special statute. To so limit the statute is to make the entire use of the word associations of negligible effect and to frustrate the design of the law in cases like this. Our contention is that the United Mine Workers is no longer circumscribed by mere common law tolerance, but now exists under numerous state and federal statutes, and that therefore it comes within

the terms of the statute. It is not a quesion of being organized under any statute, but a question of exercising rights and privileges by virtue of statutes. As was quoted in *Eliot* v. *Freeman* (*supra*):

> "There is an essential difference between a joint stock company as it exists at common law and a joint stock company having extensive statutory powers conferred upon it by the state within which it is organized."

If by statute an association derives some "benefit or quality not existing at common law" it is not necessary to go further and show it is organized under any statute.

That this has been the accepted construction by the executive and judiciary branches of the Government in connection with the Anti-Trust Law is shown by the records in a number of the cases where judgment was entered against voluntary associations.

> *U. S.* v. *Trans. Mo. Traffic Ass'n*, 166 U. S., 290.
> *U. S.* v. *Joint Traffic Ass'n*, 171 U. S., 505.
> *Eastern States Lumber Ass'n* v. *U. S.*, 234 U. S., 600.
> *Montague* v. *Lowry*, 193 U. S., 38.

The case of *Taff Vale Ry. Co.* v. *Amalgamated Society of Railway Servants*, 1901 A. C., 426, is the *cause celebre* on this question. The English Statutes of 1871 provided for the registration of trade unions under their own name, authorized them to hold property through trustees, and provided for the rendering of accounts. The defendant contended that it could not be sued as an entity and Farwell, *J.*, speaking of this contention, said:

> "If the contention of the defendant society were well founded, the legislature has authorized the creation of numerous bodies of men capable of owning great wealth and of acting by agents with absolutely no responsibility for the wrongs that they may do to other persons by the use of that wealth and the employment of those agents."

He therefore held that the union could be sued, and his decision having been reversed by the intermediate court of appeals, was ultimately sustained by the House of Lords.

In the House of Lords it was held that the statute gave no express right to sue the union, but that such right should be implied from the fact that the entity existed capable of owning property, employing servants and inflicting injury. In at least two opinions it was conceded that unless this result were reached the parties injured by such combinations would be without any substantial remedy in that it would be impracticable to sue the members. The final conclusion is well stated toward the close of Lord Lindley's able opinion, as follows:

> "The act appears to me to indicate with sufficient clearness that the registered name is one which may be used to denote the union as an unincorporated society in legal proceedings as well as for business and other purposes. The use of the name in legal proceedings imposes no duties and alters no rights; it is only a more convenient mode of proceeding than that which would have to be adopted if the name could not be used. * * * I will add that if a judgment or order in that form is for the payment of money, it can, in my opinion, only be enforced against the property of the trade union and that to

> reach such property it may be found necessary to sue the trustees."

The comments of the Harvard Law Rev. on this case, Volume 15, page 311, are interesting:

> "The acts (English statutes) in no way created trade unions; they simply regulate the trade unions hitherto existing. * * * Public policy would not prevent the courts from going still further in making the law in regard to associations accord with the actual facts."

The most important case in this country upon this subject is *Hillenbrand* v. *Bldg. Trades Council*, 14 Ohio Dec. N. P., 628, decided February 12th, 1904, which is the *Taff Vale* case of America. In that case, which was in equity, the court held that by virtue of the statutes of Ohio giving certain rights to labor unions a suit could be brought in equity or law against the union by name even though no statute expressly so provided. The court said (p. 646):

> "The labor unions made defendants in this case, having assumed permanence of form as organized bodies acting with all the precision, certainty and force of incorporated bodies and having instituted, directed and carried out the unlawful acts shown, through and by means of their machinery of organization and through the individual defendants as its instruments, the question naturally arises, whether they should not be treated in their collective capacity as wrongdoers and held liable as such for the collective wrongs?"

Answering this question on page 649, the court says:

> "Labor unions have been recognized by law in Ohio as entities capable of exercising the rights of individuals as in the trades union acts of Great Britain. Thus by Sec. 4364—49 Rev. Stat. they are authorized to adopt and possess a trade mark label in the union name, which name may be registered as such with the Secretary of State (Section 4364—51). They may sue to enjoin the unauthorized use of such labels (Sec. 4364—53); or to recover the penalty (4364—53a); and where unincorporated may by special statute sue by an officer or member for the benefit of all (Sec. 4364—33a Rev. Stat.), which recognizes the application of the equity rule. Indeed the legislature has attempted to make it unlawful to prevent men from joining labor unions or to discharge from employment because of such membership (Section 4364—68 Rev. Stat.).
>
> Those statutes are analogous in certain respects to the trades union acts of England, in so far as they recognize and establish the labor union as a distinct entity in its collective capacity, capable of holding property and exercising rights of ownership; and by consequence being subject to corresponding liabilities."

Then follows a discussion of the *Taff Vale* case, in which the court points out the identity of the two cases in the point under consideration. None of the Ohio statutes to which the court referred expressly authorized suits of any kind in the name of an unincorporated association. The statutes dealing with union labels provides that the association adopting the label may enjoin imitations if incorporated, but if not incorporated the action "may

be commenced and prosecuted by an officer or member thereof on behalf of and for the use of such association or union." The provision forbidding discharge of men for union membership is the typical one and is unconstitutional. These two laws, coupled with what was then Section 5008 of the Revised Statutes (which is like the Arkansas statute), permitting one or more persons to sue or defend for all where matters were of common interest and parties were numerous (see *Platt* v. *Colvin*, 50 Ohio St., 703), were the only laws which led the judge in the well-considered *Hillenbrand* case to hold that a union might be sued in its own name. These laws of Ohio, as far as they relate to labor unions, do not go further than the laws of most of our states, and the opinion in the *Hillenbrand* case squarely sustains our contentions.

The position of these two cases is well supported by a learned note in 30 Harvard Law Rev., 263.

It is respectfully submitted that, in view of these authorities and the accepted practice of two branches of the Government, upholding a construction which alone can make the Anti-Trust Law effective, this court should not now put these industrial associations beyond the reach of our most important industrial statute. Every inference and presumption is against the legal proposition that men by forming an association can free both themselves and the association from the acts of their agents.

Respectfully submitted,

DANIEL DAVENPORT,
WALTER GORDON MERRITT,
THOMAS HEWES.

Office Supreme Court, U. S.
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JAMES D. MAHER,
CLERK.

No. 29

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919

United Mine Workers of America et al.,
Petitioners

v.

Coronado Coal Company et al.,
Respondents

Minnesota State Library
St. Paul, Minn.

BRIEF IN SUPPORT OF MOTION FOR ISSUANCE OF WRIT OF CERTIORARI.

G. L. GRANT,
WEBB COVINGTON,
HENRY WARRUM,
Attorneys for Petitioners.

Mallett Printing Company, Inc., Indianapolis

Minnesota State Library,
St. Paul, Minn.

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Congressional Record, Vol. 21, p. 3149	28
Congressional Record, Vol. 21, p. 3151	29
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1919

UNITED MINE WORKERS OF AMERICA, ET AL.,
Petitioners.

v.

CORONADO COAL COMPANY, ET AL.
Respondents.

PETITIONERS' BRIEF ON MOTION FOR ISSUANCE OF WRIT OF CERTIORARI.

The petitioners having filed their petition for a writ of certiorari, requiring the Circuit Court of Appeals for the Eighth Circuit to certify the record in this cause, we respectfully submit the following:

STATEMENT OF FACTS.

1. That on the 1st day of September, 1914, the above named respondents, as plaintiffs, filed in the District Court of the United States for the Western District of Arkansas, Fort Smith Division, their complaint against the petitioners herein as defendants, in which they alleged that said defendants had formed a conspiracy, averred to have been in violation of the Act of July 2nd, 1890, commonly known as the Sherman Anti-Trust Law, and which conspiracy had resulted in their separate damages aggregating the sum of $427,820.77, for which sum they asked treble damages.

The process against the petitioners, labor unions, was served upon their officers, motions to quash the same being overruled.

That thereafter respondents filed a second amended complaint and the petitioners demurred to the same upon the ground that (a) the court had no jurjsdiction of the person of the defendants or of the subject matter of the action; (b) that the defendant labor unions are unincorporated societies incapable of being sued; (c) and that there was a misjoinder of parties plaintiff and of their causes of action.

That on October 25, 1915, the District Court sustained said demurrer on the sole ground that the court had no jurisdiction of the cause as one arising under the Anti-Trust Law.

Thereafter the respondents carried the case by Writ of Error to the United States Circuit Court of Appeals for the Eighth Circuit, the same being docketed as *Dowd, Receiver, et al., vs. United Mine Workers of America, et al.* The Circuit Court of Appeals thereafter in a written opinion filed on July 21, 1916, reversed the judgment of the District Court and remanded said cause for further proceedings, holding that the unions could be sued in their association names and that the complaint stated a cause of action under the Anti-Trust Law (235 Fed. 1), the mandate in full being found at page 163 in the Printed Record filed herewith.

2. That thereafter, on the 27th day of February, 1917, the said respondents filed in the District Court their third amended complaint, which is in substance as follows, to-wit:

That in the case of the *Coronado Coal Company, et al., vs. Sebastian County Coal and Mining Company, et al.*, No. 246, In Equity, Franklin Bache, in a single decree was appointed a receiver for the plaintiff companies, and C. H. Finley and H. B. Hilliard are now serving as receivers in succession.

That the Hartford Coal Company, the Mammoth Vein Coal Company, the Mammoth Vein Coal Mining Company, the Coronado Coal Company and the Prairie Creek Coal Mining Company were at the time of the appointment of

said receiver and for many years prior thereto operating coal companies engaged in the production and shipment of coal for interstate trade and commerce from coal land located in Sebastian County, Arkansas.

That prior to April, 1914, the Mammoth Vein Coal Mining Company entered into a written contract with the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company, in which it agreed to operate the mines of the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company and mine coal for them.

That the Denman Coal Company, the Bache Denman Coal Company, the Sebastian County Coal Company, the Mammoth Vein Coal Company and the Mammoth Vein Royalty Company, and each and every one of them, were *financially interested in* one or more of the *said operating companies,* either through contracts or lease of coal lands on which said operating coal companies were working, or *through ownership of all, or the majority of the stock* of the said operating companies.

That the United Mine Workers of America is an unincorporated association of mine workers engaged in the work of mining and shipping coal in different mines throughout the United States; that it is subdivided into about thirty districts and numerous local unions, the latter being a part of a particular district having jurisdiction of the territory in which such local is situated; that every member of any such local and district is a member of the United Mine Workers of America and subject to the rules laid down in its constitution and by-laws, as well as the constitution and by-laws of the said various districts and local unions having jurisdiction over them respectively; that the membership of the said United Mine Workers of America exceeds 400,000 miners.

That each of the district branches and local unions are agencies created by the United Mine Workers of America to carry out the purposes of said National Organization; that District No. 21 has jurisdiction over all of the local

unions named in the complaint; that said local unions are unincorporated associations of mine workers in the state of Arkansas, having a separate president and secretary upon whom process may be served, and the members of each of said local unions are so numerous as to make it impracticable to make all of said members defendants, and pray that said local unions be brought into court by service upon their respective officers.

That John P. White is President of the United Mine Workers, and that because the members of said local unions are so numerous it is impossible to make each one a party defendant, but that the said union is represented in District No. 21 by the president of said district, the members of the executive board of said district and the vice-president and secretary-treasurer of the National Organization, who sufficiently represent the United Mine Workers for the purposes of this action, and the service of process upon them, and the trial of the suit in which they are parties will constitute proper representation of the United Mine Workers.

That the members of this union were and for a long time had been among themselves, and also with the bituminous coal operators of the country employing union labor, engaged in a criminal conspiracy in violation of the Federal Anti-Trust Laws, to restrain the production and commerce in non-union mined coal; that one of the objects of the conspiracy was to monopolize the trade or occupation of mining coal for the members of said labor union; and that in furtherance of the conspiracy the defendants had ordered strikes of employes in unorganized mines in different states, and by violence prevented the employment of miners in said mines and by fire and dynamite destroyed the facilities of unorganized mines for producing and shipping coal in interstate commerce.

That in March, 1914, the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company discontinued operations, intending to later reopen on the open shop basis; that the Hartford Coal Company had not oper-

ated for over a year previous to April, 1914, but it was the intention of said company to later reopen on the non-union basis; that the Coronado Coal Company continued to operate as a non-union mine until April 18, 1914, when a strike of its employes occurred in furtherance of the unlawful conspiracy, and it was the intention of said Coronado Coal Company that its mine should be placed upon a non-union basis by the summer of 1914; that it was the intention to have the Mammoth Vein Coal Mining Company operate the mines of the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company under its written contract above described.

That the defendants, knowing the plans of plaintiff companies, in furtherance of said unlawful conspiracy, did, by threats, intimidation, violence and unlawful assemblies, drive away all of the men employed by said mines, and by threats, violence, murder, mobs and riots, prevented the said coal companies from employing any other persons to mine, load or ship coal, and by the use of fire, dynamite and other explosives, destroyed the facilities of said mines for the production, loading and shipment of coal, and destroyed the cars of interstate carriers at the mines to be loaded or already loaded with interstate shipments; that by said unlawful means the defendants and those acting in conjunction with them prevented any of said companies from engaging or continuing to engage in interstate trade or commerce.

Plaintiffs thereupon alleged their separate damages as follows:

Prairie Creek Coal Mining Company	$281,057.70
Mammoth Vein Coal Company	117,210.34
Mammoth Vein Coal Company	192,953.44
Coronado Coal Company	89,696.72
Hartford Coal Company	28,214.97
Sebastian County Coal Company	17,661.10
Mammoth Vein Royalty Company	4,000.00
Bache Denman Coal Company	4,245.15
Denman Coal Company	5,650.00

Said complaint is found in full at pages 179 to 201 of the Printed Record filed herewith.

3. That on the 17th day of March, 1917, the several defendants filed their separate demurrers to the third amended complaint, the United Mine Workers of America and the local unions (named as petitioners herein) demurring upon the following grounds:

(a) The court has no jurisdiction of the person of the defendants or of the subject matter of the action, because it appears from the complaint that the acts complained of were not an interference with interstate commerce nor a violation of the Federal Statutes upon which the complaint is predicated.

(b) That the complaint shows upon its face that the defendants are each a voluntary and unincorporated association or labor union, not organized for profit, not carrying on or engaged in any kind of business, and has no legal entity apart from its membership, and is not capable of suing or being sued.

(c) That the complaint shows upon its face that the plaintiffs named therein have no such community of interest in the money sued for as to entitle them to sue jointly, and that there is a misjoinder of parties.

(d) That the complaint shows upon its face that the plaintiffs named therein have no joint interest in the money sued for, that their interests are separate, several and distinct, and that there is a misjoinder of causes of action.

(e) That the complaint does not show that the defendants have monopolized or are about to monopolize any part of the plaintiffs' trade or commerce within the meaning of the Sherman Anti-Trust Law.

That on the same date the individual defendants demurred to the third amended complaint upon the same grounds stated in the demurrer of the United Mine Workers and the local unions, except as to the specification which pertains to the power to sue unincorporated associations in their association names.

The said demurrers are set out in full at pages 207 to 209 of the Printed Record filed herewith.

That thereafter, on the 21st day of March, 1917, the said demurrers were overruled, each of the demurring defendants duly excepting at the time. (P. R. 3239.)

4. That on May 2, 1917, the United Mine Workers of America and the local union defendants, and District No. 21, severally moved the court to strike from the complaint the names and pretended causes of action of each of the said plaintiffs joining in said complaint, on the ground that it is not shown by the complaint that the plaintiffs have a community of interest in the relief sought and that therefore there is a misjoinder of plaintiffs and of causes of action. Said motion is set out in full at page 214 of the Printed Record filed herewith.

That said motion was overruled on May 10, 1917, with exceptions to each of said defendants. (P. R. 223.)

5. That on July 7, 1917, the United Mine Workers of America filed its separate answer to said complaint and on said date answers were likewise filed by District No. 21, the local unions sued and each of the individual defendants. Said answers are set out in full at pages 238 to 268 of the Printed Record filed herewith, said answers denying said conspiracy and the liability of the defendants to respond to the said plaintiffs in damages, the labor union defendants affirmatively pleading their character as unincorporated societies, that neither of said labor unions are engaged in the production, sale or transportation of coal, and that their members are engaged in the occupation of mining coal, each for himself, and performing labor in and around coal mines; that no member or officer of the organization is authorized or empowered to act for said labor unions except as determined by the constitution of the unions, which do not authorize any of the illegal acts set out in the complaint, and also that each of said plaintiffs is a separate corporation and that neither of them

has a community of interest with the others in the subject of the action or the money sued for.

6. That the respondents filed their certain motions to require the labor unions and their officers to produce certain books, documents and papers for respondents' inspection and use at the trial, said motions averring that the writings sought to be produced would establish the criminal conspiracy alleged. (P. R. 292, 303, 309 and 315.)

That on September 21 and 28 and October 13, 1917, the court made its several orders requiring the defendant labor unions and their respective officers to make such production, which was done over the protest and exception of the petitioners. The said books, documents and papers briefly stated were as follows:

(a) All letters in possession of John P. White, written to him by Peter Stewart, Fred Holt and James Mullen, between April 1, 1914, and January 1, 1915, and copies of all letters of the said John P. White to any of the said persons during the said period.

(b) Transcript of the minutes of the International Executive Board, United Mine Workers of America, from April 1, 1914, to January 1, 1915.

(c) The printed volumes of the United Mine Workers' Journal from January 1, 1892, to April 26, 1916.

(d) Each volume of the Miners' Convention proceedings from 1898 to 1916.

(e) All the printed proceedings of the joint conventions held between United Mine Workers of America and the coal operators from 1898 to 1916.

(f) The convention proceedings of the United Mine Workers of America, District 21, from 1914 to 1916.

(g) The expense accounts of James Mullen, John P. White and K. C. Adams from April 1, 1914, to March 1, 1915.

(h) All contracts in effect during March, April, May, June and July, 1914, between the United Mine Workers

of America, or any district branch thereof, and any union coal operators in the United States and Canada.

(i) The reports of all officers of District 21 for 1914, 1915 and 1916.

(j) The several treasurers' reports, expense accounts, or memoranda of disbursements of funds of said local unions, showing the disbursements for union purposes of the funds of the said local unions for 1914, 1915 and 1916.

(k) List of the members of the respective local unions for 1914, 1915 and 1916.

(l) All cancelled checks and stubs of check books showing disbursements of the funds of District 21, from April 1, 1914, to January 1, 1916.

Said orders are set out in full at pages 301, 313 and 324 of the Printed Record filed herewith.

7. That upon the issues joined the cause proceeded to trial before a jury, the Honorable James D. Elliott presiding. The evidence heard is found in the Printed Record filed herewith from pages 364 to 3176.

8. That at the trial, over petitioners' objections and exceptions, respondents were allowed to read in evidence a large number of extracts from speeches and arguments found in certain printed books purporting to contain reports of the proceedings of various joint conferences of bituminous coal operators and representatives of the Miners' Union held from 1902 to 1914 in the Central Competitive Field. These extracts were offered as original evidence of the statements of the parties quoted and for the purpose of proving the alleged conspiracy between the operators and union miners. The extracts are so numerous and voluminous that it is impracticable to summarize them and they are found in full in the Printed Record at pages 556, 565, 570-573, 578-590, 583-595, 597-602, 605-612, 1066-1071, 1074-1119.

9. At the conclusion of the hearing of evidence the defendant labor unions severally moved the court for directed verdicts on the ground that there was not sufficient evidence

to warrant a finding being returned against them, which motion was overruled with exceptions. (P. R. 350-351, 3187.)

10. After the jury had deliberated without results for about two days, the trial court, of its own motion, recalled the jury and gave them the following, peremptory instruction:

"The Court: Gentlemen, the court understands you have not agreed upon a verdict yet. Is there anything that the court can say to you that will be of help to you now?

"Juror Dunnigan: There is nothing that I know of, Your Honor, not on my part.

"The Court: What seems to be the stumbling block in the way of an agreement?

"Juror Dunnigan: We don't understand the evidence alike; we do not see it alike; we do not agree.

"The Court: Are there any questions that individuals would like to ask the court?

"Juror Dunnigan: None that I know of.

"Now, Gentlemen of the Jury, this is a pretty serious situation, and I want to say to you that the court has no thought at all of discharging you. You were sworn upon your oath to do your duty as jurors. In the opinion of the court there is no reason on earth why reasonable men with a due regard for right, and each having due respect and consideration for the other's opinion, should not arrive at a conclusion in this case. What would be a fortune to either of you, or I, has already been spent and a failure to render justice in this and others is what brings the courts into contempt. I say this to you that you may understand the seriousness of your situation. The facts in this case have got to be found by a jury. Another jury will have no better opportunity of knowing what these facts are, or be in any better position to determine these facts than you, and it is your duty as jurors under your oaths to get together and return a verdict.

"Now, the Federal Courts recognize the right of this court under these circumstances to say what this court believes in relation to the facts in this case, and you are ad-

vised that this court is of the opinion that the facts in this case justify you in the conclusion overwhelmingly that it was the policy and, therefore, the agreement for years of this National Organization to prevent mining of non-union coal for the unlawful purposes named in this complaint that it might not come into competition with union mined coal; that there is no question in this court's mind but that that strike was ordered down there for the purpose to prevent the mining of non-union coal in these plaintiffs' mines; that the strike was called by those who were the instrumentality of the greater organization, the general organization, the defendants, and their act was its act, and that they put into motion the force that destroyed this property, and that that force was put in motion for the purpose of preventing the mining of that coal, the shipping of that coal, the running of these mines. Why, this court has not a thought that there would ever have been any trouble there if it had not been for the prevention of the mining of non-union coal. Now, that is the judgment of this court, and if it were my duty to decide it, I would decide it here. Now, you are not bound by my opinion. I have the right to give you my judgment; however, you are the sole and exclusive judges of the facts, and it is for you to determine, and this court believes you ought to determine it and under your oath as jurors agree upon a verdict.

"If there is any question about the law on the responsibility for this responsibility of the greater organization, this is for the higher court to say, but you cannot reach it until you have done your duty—you are the stumbling block in the way and this whole time is wasted. Now, after I have said what I have, I am going to say that I have no thought of discharging you; you must return a verdict in this case. You are amply qualified to do the right thing as you see it, and as it should be done, and the thought of this court is that no other jury will ever be better prepared to render a verdict than you, and to separate without a verdict will be to have rendered all this expense

of all this trial for naught—make it necessary to go all over the ground again, with no better opportunity on the part of the jury in the box, when it has all been done, to do the right thing than you have now, no advantage—none in the world. You see the importance of the situation, and I now urge you with the idea of doing the right thing and putting this matter in that condition that a trial of the case with a legitimate end, in which a verdict of the jury will place it. And with a knowledge and feeling of responsibility, and that responsibility is with you, that you now return to your jury rooms and bring in a verdict."

To which an exception was reserved by petitioners. (P. R. 3235.)

11. The jury thereupon returned a verdict for respondents as follows:

"We, the jury, find the issues in favor of the plaintiffs, and against the defendants, and assess plaintiffs' actual damages at $200,000.00. John Dunnigan, Foreman."

Upon the reading of the verdict, and while the jury was yet at bar, exceptions were taken by petitioners to the form of the verdict, on the ground that the verdict should have apportioned the damages. (Rec. 3237.)

12. That thereafter judgment in the sum of $600,000.00, with costs and attorneys' fees, was rendered on said verdict, whereupon the petitioners within competent time carried the said cause by Writ of Error to the United States Circuit Court of Appeals for the Eighth Circuit, and submitted the same upon certain assignments of error and upon a transcript of the record of proceedings had in the trial court, said assignments of error being set out in detail in the Printed Record submitted herewith, pages 3244 to 3356.

That on the 28th day of April, 1919, said judgment was affirmed by the Circuit Court of Appeals by a majority opinion of Sanborn and Trieber, JJ, Hook, J, dissenting (P. R. 3414-3438), and the court retained said cause on petition of petitioners herein for rehearing, which petition for rehearing was

by said court overruled and denied on November 15, 1919. (P. R. 3450.)

SPECIFICATION OF ERRORS.

I.

The Circuit Court of Appeals erred in holding that the United Mine Workers of America District 21, and the various local unions named in the complaint were entities against which an action could be instituted, process had, and judgment recovered; they being unincorporated labor unions, having no legal existence apart from their membership, and not being subject as such to process or judgment in the case at bar.

II.

There was a misjoinder of plaintiffs and their causes of action, the complaint failing to show any unity of interest in the plaintiffs in the damages to be recovered, or any joint cause of action by them.

III.

The orders requiring the unincorporated labor unions and their officers to produce from their files books, writings and documents for the averred purpose of proving the officers and members of these unions guilty of the criminal conspiracy, were violative of their constitutional rights under the Fourth and Fifth Amendments to the Federal Constitution.

IV.

The Circuit Court of Appeals erred in holding that the testimony of William Green, Secretary of the United Mine Workers of America, that certain printed books were "verbatim reports of the proceedings of the joint conferences between the miners and operators," or the testimony of other witnesses that the books contained correct statements of said pro-

ceedings, constituted a proper foundation and authentication in law for the original use of such books in evidence by reading extracts therefrom as showing what was said by the parties therein quoted.

V.

The Circuit Court of Appeals erred in sustaining the ruling of the District Court in refusing to direct a verdict for the petitioners.

VI.

The Circuit Court of Appeals erred in sustaining the action of the District Court in recalling the jury after its two days' deliberation and giving them the instruction that (a) coerced a verdict for respondents; and (b) directed them that it was their proper duty to return such a verdict in order that the question of the legal responsibility of the United Mine Workers of America could be determined by a higher court.

VII.

The Circuit Court of Appeals erred in sustaining the District Court in holding that the verdict of the jury should not apportion the damages recovered by the various respondents.

BRIEF OF THE ARGUMENT.

The court erred in holding that the United Mine Workers of America, District 21, and the various local unions named in the complaint, were entities against which an action could be instituted, process had, and judgment recovered; they being unincorporated labor unions, having no legal existence apart from their membership, and not being subject as such to process or judgment in the case at bar.

The point involved is the right to bring the individual members of the United Mine Workers of America into court by suit against them in their society name, with service upon their officers, and thus recover judgment for damages against the entire membership. This right has been contested at every step, beginning with the special appearance and motions to quash summons. The question was regarded by the District Court and the Circuit Court of Appeals as presented by the demurrer (*Dowd v. United Mine Workers of Am.*, 235 Fed. 1). After the decision just cited and remanding of the case to the District Court, the respondents filed their third amended complaint, and this point was again raised by demurrer, and on the last review of the case the Circuit Court of Appeals stood by their former decision, thereby holding that the petitioners' labor unions were entities subject in their society name to suit, process and judgment.

United Mine Workers of America v. Coronado Coal Co., et al., 258 Fed. 829.

In *Allis-Chalmers Co. v. Iron Moulders*, 150 Fed. 155-183, it was held that an unincorporated labor union, although sued without objection and an appearance having been entered for it, was not liable to have a fine adjudged against it in a civil proceeding at law.

In *Pickett v. Walsh*, 6 L. R. A. (N. S.) 1067-81, the Supreme Court of Massachusetts held that a voluntary unincorporated labor union cannot be sued. The court said:

> "There is a point of practice which must be noticed. As we have said, the plaintiffs have undertaken to make three unincorporated labor unions parties defendant. That is an impossibility. There is no such entity known to the law as an unincorporated association, and consequently it can not be made a party defendant."

The court struck out the names of the three labor unions.

In *Irving v. Joint District*, 180 Fed. 896, it was held that

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a union was not a citizen of any state and that the court had no jurisdiction of it.

In *American Steel Co. v. Wire Drawers' Union*, 90 Fed. 598, it was held that a trade union was not sueable.

Another case with full annotations upon this point will be found in *Karges Co. v. Amalgamated Wood Workers*, 2 L. R. A. (N. S.) 788.

In *Oxley Stave Co. v. Coopers' International Union*, 72 Fed. 695, the District Court held that an unincorporated association could not be sued, and that holding was upheld by the Court of Appeals for the Eighth Circuit, *Hopkins v. Oxley Stave Co.*, 83 Fed. 912.

In *Dowd v. United Mine Workers of America, supra*, the Circuit Court of Appeals said:

> "It is true that in the absence of a specific statute to the contrary, the rule at common law, and under the codes, is that an unincorporated association is not recognized as having a legal existence apart from its members."

And further:

> "The question of the liability of an unincorporated labor organization to be sued under the act of July 2, 1890, in the name of the association, does not seem to have been discussed in any reported case which we have been able to find."

The court, however, found satisfactory authority for its ruling in Section 8 of the act of 1890, which provides:

> "The word 'person' or 'persons' wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country."

From this provision the court held that by necessary implication an association like a labor union may be sued under this statute in its own name. Yet the word "association" as used in this section is immediately connected with the word "corporation," and under the *noscitur a sociis* rule of inter-

pretation it would mean associations of a corporate character or those associations which were analogous to corporations. In *Campbell v. Floyd,* 153 Pa. 84, the statute involved referred to "corporations or associations," and the court held that the word "associations" as used was necessarily synonymous with corporations; that it referred to creations of the law.

In addition, both words in the statute are followed by the same qualifying phrase, "existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country." Certainly this refers only to associations which are recognized by law as having a legal entity. No doubt a labor union might acquire this character. For instance, four years before the anti-trust act was enacted, Congress passed "An Act to Legalize the Incorporation of Trade Unions". (24 Stat. L. 86). By this act a trade union is permitted to file its articles with the recorder of the District of Columbia; and it might then become the kind of "association" which was contemplated by the anti-trust statute.

The court apparently considered the statutory phrase from the popular rather than the legal point of view; for they said:

> "The defendants of course will not take the position that they are outlaws, for they are continually recognized in the legislation of Congress and of the several states as lawful associations."

Yet even such an effort to fit the statute to the inclusion of labor unions reveals its weakness when it is suggested that by similar logic the Democratic party or the Republican party could be held sueable as legal entities. Political parties are, of course, recognized in the legislation of Congress and the states as lawful associations, and neither of the two named are prepared to admit they are outlaws. In fact, the ruling in question would authorize a suit and judgment against a political party as a legal entity if the complaint charged its membership in round terms with a conspiracy in restraint of trade.

The court also used the following reasoning:

"The fact that labor organizations seeking to be exempted from the act is of course conclusive evidence that Congress knew of such organization and did not intend to exempt them, while by the Clayton Act, Sec. 4, Act Oct. 15, 1914, a remedy is given to one injured in his business or property by reason of anything forbidden in the anti-trust laws, regardless of who shall commit the injury."

The source from which the situation in Congress during the passage of this bill is ascertained must be the Congressional Record. From it we learn that Mr. Sherman, the author of the bill, in discussing whether the bill applied to labor unions, used the following language:

"They are not business combinations. * * * And so combinations of workingmen who promote their interest, promote their welfare, and increase their pay, if you please, to get their fair share of the division of production are not affected in the slightest degree, nor can they be included in the words and intent of the bill reported." Cong. Rec., Vol. 21, p. 2562.

It is not without significance that for twenty-four years after the passage of the Sherman Act—years filled with acute conflicts between capital and labor—no one seriously conceived the idea of suing a labor union for damages under its provisions until the institution of this suit.

In the Danbury Hatters' case, which marked the supreme effort of capital to secure relief under the anti-trust laws against alleged conspiracies of workingmen in restraint of trade, no idea was entertained that the labor union could be held as an entity or its entire membership sued in the union name. On the contrary, the court clearly recognized the liability of those members of the Hatters' Union only who had participated in the wrong doing or had ratified the conspiracy.

In *Irving v. Neal*, 209 Fed. 472, which was a proceeding under the anti-trust act, the court said:

"The bill has been dismissed against the general district

council, because it is a voluntary association, and not a citizen of any state."

If the word "association" as used in Section 8 is at all entitled to the construction given it by the Court of Appeals, it is still apparent that it must have meant associations formed for a pecuniary purpose. The United Mine Workers of America and other labor unions of the country are not organized for pecuniary purposes and do not as such engage in any business. Each member labors for himself. They are unincorporated associations of men, constantly changing in membership, whose purpose and function are by collective action to secure wage contracts and conditions of labor that are intended to better the members as individuals. In *Burnett v. Marceline Coal Co.*, 79 S. W. 134, the Supreme Court of Missouri, speaking of this union, said:

> "The miners' union is not an organization for the purpose of conducting any business enterprise, but is purely one for the protection of labor against the unjust exactions of capital. The members of the union do not labor in the coal mines for the organization, but each member works for himself, and whatever compensation he receives is for the benefit of himself and family."

This decision and ruling was approvingly cited by the Supreme Court of Minnesota in *St. Paul Typothetae v. St. Paul Book Binders' Union*, 102 N. W. 725.

Wrightington on Unincorporated Assns., p. 149.
White v. Brownell, 2 Daly (N. Y.) 399.

Finally the Clayton Act of Aug. 15, 1914, on the point in question, expressly provides in Sec. 6:

> "Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agriculture or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal com-

binations or conspiracies in restraint of trade, under the anti-trust laws."

This is a Congressional declaration that labor unions are not "persons" within the meaning of the act; that neither such unions nor their members *as such* shall be held or construed to be illegal combinations under the anti-trust laws. Of course one or more, even all, of the members of a labor union may be guilty of such conspiracy, and so held to respond in damages when properly sued. But so may the members of a particular church, or of a political party. The Congressional declaration is that they may not be brought in as members of a labor union. We submit the Clayton Act in this respect provided a guide which ought not to be wholly ignored by the courts when, as they confess, they have reached a point where precedent fails them. But the statute in question is something more than a mere guide. The Clayton Act limits the meaning of the word "association" in its anti-trust legislation. It is not a question whether this declaration by Congress imported something into a former statute which is not there, or whether legislative interpretation may not overcome judicial interpretation. No retrospective operation is involved. It is a Congressional declaration of the operation of anti-trust laws, at least from that time on. In this respect the declaration of Congress will govern the courts even in pending actions.

In *Re Clinton Bridge,* 5 Fed. Case 2900; S. C. 10 Wall 454.

Assume that the Clayton Act gave an admittedly new interpretation to the existing statutes: Congress may pass an act defining the terms of an existing statute, or declaring its construction, and the act will govern the future proceedings under the act, though the cause accrued or the suit was begun before the enactment of the declaratory act.

Bailey v. Clark, 21 Wall 284-288.

U. S. v. Freeman, 3 How 556-564.

Even granting that the action was begun with the filing of the complaint on Sept. 1, 1914, the Clayton Act controls the subsequent proceedings. If a labor union, *qua* union,

could not after Oct. 15, 1914, "be held or construed to be an illegal combination or conspiracy in restraint of trade under the anti-trust laws," with what authority did the court thereafter entertain process and hear proof against a labor union, or judicially construe it to be such an unlawful conspiracy, or render judgment against it as an illegal combination under the anti-trust laws? There has been so far no suggestion that the union was liable at common law, or that the respondents had any vested right of action against these unincorporated unions at common law. At most their anomalous liability is said to arise out of the anti-trust laws; and the authority which conferred the right to such recovery may take it away. The rule as to the operative effect of statutes modifying or taking away such remedies is as follows:

> "Where a right given by statute is not by nature a vested right, and at the time of the repeal of the statute has not been reduced to judgment, or otherwise executed, it will fall within the statute, unless expressly excepted."
>
> 36 Cyc. 1226.

The right being purely a creation of the legislature can be modified or even taken away by the same authority. This doctrine received extreme application in *Louisiana v. Mayor*, 109 U. S. 285, where judgment in tort had been recovered against the city of New Orleans at a time when the state law authorized cities to be sued in tort and provided tax levies for the discharge of such judgments. But in that case the recovery of judgment was followed by a change in the state constitution so limiting the levy of municipal taxes that the judgment holders resorted to mandamus to compel a special levy for the liquidation of their judgment. The court held that the judgment in question, though called a contract, created no contractual right that was impaired by the change in the law.

See also *The Collector v. Hubbard*, 12 Wheat. 1.

Norris v. Crocker, 13 How. 429.

Backus v. Fort Street Union Depot Co., 169 U. S. 557-68.

Templeton v. Linn County (Ore.), 15 L. R. A. 730.
Eastman v. County of Clackmus, 32 Fed. 24.

There was a misjoinder of plaintiffs and of their causes of action, the complaint failing to show any community of interest in the plaintiffs or any joint cause of action.

This question was raised by demurrer, and also by a motion to strike out the names and causes of action of each of the plaintiffs, both methods being recognized by the Arkansas practice; and the vice of the joinder was set up in the answer and urged upon the motions for directed verdict. The question involved was considered by the Circuit Court of Appeals as arising on the demurrer. (*United Mine Workers of America et al., v. Coronado Coal Co. et al.*, 258 Fed. 829.)

The Circuit Court of Appeals refers to the complaint as alleging that the nine corporations "were under the control of the same persons, who owned all the shares of stock of all nine corporations, all were operated as one, eight of them being subsidiaries of the Bache-Denman Coal Company; that by reason of these facts the destruction by the defendants, of the property of said corporations, they sustained the losses jointly."

We respectfully submit that the complaint contains no such averments, and suggest that this misconception has deflected the judgment of the court from the real questions of pleading and practice presented by the record.

The complaint appears in record 180-201. Paragraph 3 sets out that five of the companies had been for years engaged in mining and shipping coal; but it is not alleged that even these five conducted their business jointly.

In paragraph 4 it is expressly averred that the Hartford Coal Company employed about 70 men, the Mammoth Vein Coal Company about 300 men, the Coronado Coal Company about 250 men, "and that all of said operatives were employed by said respective companies in connection with the production, loading and shipment of coal in or about their respective mines for inter-state trade and commerce, and that the value of the annual shipments and sale of coal by said mines re-

spectively exceeded the following" (setting out shipments of each).

Certainly these show an independent property and business on the part of each.

In the same paragraph it is alleged that the Mammoth Vein Coal Mining Company had entered into a contract with the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company to operate the respective mines of the last two companies; but there is no averment of joint interest between the three companies and no suggestion that the other six companies were interested in these contracts.

In the same paragraph it is alleged that the "Denman Coal Company, the Bache-Denman Coal Company, the Sebastian County Coal Company, the Mammoth Vein Coal Company and the Mammoth Vein Royalty Company, and each and every one of them, were financially interested in one or more of the aforesaid operating companies either through contracts or leases of coal lands on which said operating companies were working, or through the ownership of all or a majority of the stock of said operating companies." Certainly if these five companies were interested in one or more of the operating companies, they were not interested in all of them, and there is no suggestion that they were interested in each other. Therefore all of said companies were not jointly interested in the damage sought. Further, the fact that certain of the plaintiffs were "financially interested in certain other plaintiff companies" was not sufficient to show that a joint remedial interest existed between all of these companies. When a corporation sues at law for a tort to its property, neither a stockholder nor creditor can join, as having a joint cause of action with the corporation.

United Copper Co. v. Amalgamated Copper Co., 244 U. S. 261.

Loeb v. Eastman Kodak Co., 183 Fed. 704.

That the same persons owned all of the stock of all the nine companies would not merge the legal titles of their separate properties, or give them a joint cause of action; but

the complaint contains no averment of such community of stock holding.

Nor is it anywhere alleged in the complaint that "eight of these companies were subsidiaries of the Bache-Denman Coal Company."

No authority in law has been offered for the curious proposition that because receivers were appointed for these nine corporations in one suit and in one decree, their separate causes of action thereby became joint. No such authority can be found. The rights of a receiver are the rights of the corporation, and his right of action is merely the right of action which the corporation originally possessed.

Am. & Eng. Encyc. of Law, Vol. 23, p. 1073.

"The appointment of the receiver does not have the effect of changing any rights of action, or of changing the contract relations between the original parties, against whom the receiver is appointed, and their debtors. The receiver, therefore, can not maintain an action upon a note or obligation running to the original party which he himself could not have maintained."

High on Receivers (4 Ed.), Sec. 204.

That the receiver was appointed receiver of different companies at the same time does not merge their assets, including choses of action, and can not have the effect of rendering their several rights joint rights.

The above averments disclose the claims of the nine plaintiffs and to their respective properties. Let us pass to their claims of losses. In paragraph 28 these losses are "apportioned between said companies and itemized as follows," and then follows a statement showing the separate damages claimed by each company. It thus appears that though it prayed for a judgment in gross, the complaint relies upon the separate and several damages of the consolidated plaintiffs. The prayer will not control the complaint, but the rights of the parties will be determined from the averments.

There is nothing in the complaint showing a joint cause of action. It is plain that any one of the coal companies

could have brought its individual action. Under the well-known rule of pleading this could not be so if they had a joint cause of action. A joint cause of action is quite different from a joinder of causes. In the latter case the joinder, whether by the plaintiffs themselves, or by the court, simply combines their several causes for one trial. If they have a joint cause of action this exists independent of any consolidation statute and arises out of the nature of the interest damaged.

In *Keary v. Mutual Reserve Fund Association*, 30 Fed. 359, the insurance policy sued on provided "for the payment of $2,000 to one party, $1,000 to another, and so on." Judge Brewer said:

> "All the different parties in interest, beneficiaries in the policy, have joined in one action, and the demurrer is on the ground of improper joinder of actions. Of course there may be a unity of interest in the subject matter of the action, but there is no unity of interest in the relief desired. If, for instance, one of these beneficiaries is paid, the others have no interest in and are not prejudiced by that payment, and he has no interest in the money that is due the other beneficiaries."

The same learned judge elaborated the reasons underlying this rule in *Belding v. Gains*, 37 Fed. 817-8.

In *Harris v. Preston*, 10 Ark. 201, there was an action in ejectment by several persons against one person. It appears that the plaintiff took the lands by will, and that it was partitioned among them so that the interest of each heir was set apart to him. In the suit all the heirs joined as plaintiffs. In the trial it developed that the defendants occupied, not all of the lands, but only a part of them. The court held that one of the plaintiffs named in the complaint had no interest in any of the lands occupied by the defendants and for that reason there was a misjoinder of parties.

In *Johnson v. Ditlinger*, 215 S. W. 694, decided November 17, 1919, by the Arkansas Supreme Court, the complaint filed,

which formed the basis of the decision of the court, was as follows:

"That on or about the ——— day of ————, 1915, the defendant, Joe Johnson, collected the sum of $70, witness fees and mileage, in the case of *Sadie Miller v. St. Louis, Iron Mountain & Southern Railway Company*, without the authority of those plaintiffs, and unlawfully and wrongfully withholds the same from the plaintiffs, although demand has been made for the same."

In passing upon the question of the misjoinder of parties plaintiff and their causes of action, the Supreme Court said:

"The complaint filed before the justice plainly shows a misjoinder of the parties plaintiff and of causes of action, because the witness fees alleged to have been collected by Johnson were not the joint property of the plaintiffs, but each was entitled only to his or her own fee, and neither was entitled to the aggregate amount; therefore, the causes of action, if any, were separate and not joint."

In *Gray et al. v. Rothchilds et al.*, 48 Hun. 596, several plaintiffs sued the defendants, alleging the latter had entered into a conspiracy to defraud and had defrauded the plaintiffs. The joinder was defended on the ground that a statute provided "that all persons having an interest in the subject of the action and in obtaining the judgment demanded may be joined." The court sustained a demurrer for misjoinder of plaintiffs, saying:

"There is no joint subject of action in this case, nor can any joint judgment be recovered in the action under authority of this section, but each one of the firm have a separate and distinct cause of action against the defendants, upon which, in case of a recovery, a separate judgment would necessarily be entered."

The opinion cites the Arkansas Consolidation Act of 1905, as authorizing the joinder of the plaintiffs' causes of action; and holds that the state practice controls under the Federal Conformity Act. Then the opinion seems to abandon the question of consolidation and to hold that the plaintiffs' cause

of action was a joint one. It is obvious that if the cause of action was joint no appeal to the Arkansas Consolidation Act was necessary. On the other hand, if the plaintiffs' causes of action existed severally, the mere fact that they were joined or consolidated under either the Arkansas or Federal Consolidation Acts would not transform them into a joint cause of action.

The cases cited by the Circuit Court of Appeals upon this point (*Southern Anthracite Coal Co. v. Thrasher*, 93 Ark. 140, and *St. L., I., M. & So. Ry. Co. v. Broomfield*, 83 Ark. 288) proceed upon the theory that the causes thus consolidated are not joint but separate in so far as the damages must be apportioned between the different plaintiffs.

In the case of *Kansas City Southern Railway v. Leslie*, 238 U. S. 599, there was no question of the joinder of various plaintiffs seeking their separate recoveries for damages to their respective estates or property. Suppose, however, that in the same wreck two men had been killed, and that their personal representatives appointed by the Probate Court had, under the Consolidation Act of Arkansas, joined in suing. This would present a case analogous to the one at bar. But would the court say that their joinder under the Consolidation Act transformed their several claims into a joint cause of action and authorized one verdict for the two in which the damages were not apportioned. Discussing the theory that separate causes had been consolidated, the court construed the case of *Mutual Life Insurance Company v. Hillman*, 145 U. S. 285, as only protecting certain rights, such as challenges of jurors, which the court says we have not been deprived of. But the effect of the Hillman decision was that the Federal practice, under the Federal Consolidation Act, first vested the right to effect consolidation in the court and not the parties; and, second, preserved the essential integrity of the several causes thus consolidated throughout the trial. We did not complain because our right to challenge jurors was violated; simply used this as an illustration.

The theory of respondents was that since the enactment of the Consolidation Act of Arkansas in 1905, the Supreme Court of that state has recognized the practice of permitting the joinder of plaintiffs and their causes of action in the original institution of a suit wherever a consolidation might properly be allowed under the statute referred to, were the suits separately brought. Our position is that these decisions create a new and anomalous practice unknown to the well-established principles prevailing in the Federal courts, are a departure from the practice long prevailing in the Federal courts whose districts lie within Arkansas, constitute a rule of practice not authorized by the statute in question and therefore not binding on the Federal courts under the Federal Conformity Act, and in no event are applicable to suits of this character.

It was certainly never intended by Congress that the right of action thus given should be resorted to by a combination of plaintiffs seeking their several recourses by one action. While the bill was pending in the Senate, the question arose as to whether several plaintiffs might join together and sue for separate damages in one action. Senator George offered the following amendment:

> "And, in all such actions, it shall be lawful for a number of persons complaining of such injuries committed by the same defendant against each of them separately to join as plaintiffs, and the court or jury trying the issues of facts in any such cause shall find the amount of the separate damages sustained by each plaintiff, and may also find in favor of a part of said plaintiffs, and against the others, as the proof shall warrant, and the court shall render judgment accordingly; and in the proceedings in a cause the court may, if justice so requires, proceed with the trial thereof as to a part of said plaintiffs and continue the causes to a future day as to the remainder, and this may be done as often as justice may require, and whenever there shall be a motion for a new trial in any such case, the court may sustain the same as to part of said plaintiffs and over-

rule it as to the others, according as the right and justice of the case may require. Execution shall issue on any judgment rendered in such cause in favor of each plaintiff for the amount recovered by him, and for his reasonable attorneys' fees, and also for such share of the costs as the court shall determine to be fair and reasonable."

Cong. Rec., Vol. 21, p. 3151.

Senator Morgan, in debating the above amendment, said:

"I should have been perfectly satisfied with this bill, or the first three propositions of it, as a bill that would cover the evil, but we have gone further and given a personal remedy to whoever may be injured in his business or property by the unlawful act defined and denounced by the statute. We can not go every length. We can not bring in a bill in the nature of a creditor's bill for the purpose of enabling a man to sue in favor of himself and of other persons who may find themselves injured and therefore is given a creditor's bill to recover debts."

Cong. Rec., Vol. 21, p. 3149.

The amendment was rejected by the Senate.

Cong. Rec. 3151, ib.

It is thus plainly shown that Congress had no idea of allowing a number of complaining parties with distinct interests to join in one suit, but intended that each aggrieved person would sue in his individual right.

Section 7 of the Sherman Act provides that:

"Any person who shall be injured in his business or property * * * may sue therefor."

The clear and necessary implication is that each person must bring his suit alone, not that parties may join their causes in such a proceeding. At the time this statute was enacted the practice in the Federal courts (and in Arkansas as well) was understood to prevent such a joinder. Is the statute not entitled to be interpreted—in the clause in question—as contemplating the observance of this existing procedure? Is the practice it contemplated subject to the future legislation

of the state, or to the experiment in procedure adopted by their courts?

Moreover, the Arkansas Consolidation Act of 1905 will not warrant such a joinder in the Federal courts sitting in that state. The Arkansas statute reads as follows:

> "When causes of action of a like nature or relative to the same question are pending before any of the circuit or chancery courts of the state, the court may make such orders and rules concerning the proceedings therein as may be conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice and may consolidate said causes when it appears reasonable to do so."

It is a plain copy of the Federal statute of consolidation, which is as follows:

> "When causes of a like nature or relative to the same question are pending before the court of the United States, or of any territory, the court may make such orders and rules concerning proceedings therein as may be conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice and may consolidate said causes when it appears reasonable to do so." (F. S. A., Vol. 4, p. 587.)

The rule generally prevails that where a state adopts a statute that has been interpreted in other jurisdictions it presumatively adopts the interpretation which has there been accorded it. This would seem to be the more imperative where the statute adopted has operated and determined the practice in courts having concurrent jurisdiction with the courts of the adopting state. The Federal statute has been the subject of the express consideration by the Federal courts. Instead of holding that the act authorizes the parties to originally join in bringing a suit, the Federal courts have uniformly held that the right to order consolidation rests wholly in the discretion of the court, a discretion that can not be coerced by mandamus or reviewed on appeal except in case of grave abuse.

Mutual Life Ins. Co. v. Hillman, 145 U. S. 285-292.

What becomes of this discretion if parties may forestall its exercise by making their own consolidation before filing their complaint? In accordance with its manifest purpose, it has been treated as a right which the courts may exercise for the purpose of avoiding delay or unreasonable expense in the administration of justice, but not as conferring a positive right upon parties who seek relief in common law actions. As Judge Lurton has said:

> "Such consolidation is primarily but an expedient for saving costs and delay. Each record is that of an independent suit, except in so far as the evidence in one is, by the order of the court, treated as evidence in both. The consolidation does not change the rules of equity pleading, nor the rights of parties, as those rights must still turn on the pleadings, proofs and proceedings in their respective suits."

Toledo Co. v. Continental Trust Co., 95 Fed. 497-506.

Keep v. Indianapolis Ry., 10 Fed. 454.

In construing the Arkansas Consolidation Act, the courts of that state have expressly declared themselves untrammeled by the interpretation of the Supreme Court of the United States. In *Fidelity-Phoenix Ins. Co. v. Friedman*, 117 Ark. 71, the question arose as to the challenge accorded the several defendants in a consolidated case, the defendants contending that the rule of the Federal courts under the Act of Congress, which had been adopted by the state, should prevail. But the court, by Hart, J., said:

> "In support of their contention they cite the case of *Mutual Life Ins. Co. v. Hillman*, 145 U. S. 285. It must be conceded that that decision sustains the contention of the defendants, but we do not agree with the reason of the court in that case."

It is manifest that the Federal courts and the Arkansas courts do not interpret alike the effect of their respective consolidation statutes upon the practice and procedure thereunder. And the right exercised by the state court to indulge in new

experiments in procedure should not be superior to the right of the Federal court to follow its own long-established practice.

Under the Federal Conformity Statute conformance to the practice adopted by the Arkansas courts in construing the consolidation act is neither required nor justified on the part of the Federal courts. It would violate their own statute of consolidation, as they have interpreted it, and would result in a complete abandonment of their established methods of procedure.

In Bates on Federal Procedure and Law, Vol. 2, p. 680, Sec. 971, the following rule is stated:

> "The Federal courts will not conform to state procedure, when, to do so, would contravene any rule of procedure prescribed by a Federal statute, or when the state law prescribing procedure is inconsistent with the terms, or would tend to defeat the purpose, or impair the effect, of any legislation of Congress."

In numerous Federal decisions are found illustrations of the limitations attached to this rule of conformance. In the Hillman case, *supra*, where the question of consolidation involved the state practice of allowing the collective defendants only the challenge accorded one party, the United States Supreme Court rejected the state law for its own interpretation of the effect of the Federal consolidation act on the rights of the parties and the procedure thereunder.

In *Holt et al. v. Bergevan et al.*, 60 Fed., page 1, two plaintiffs joined in seeking to enforce a lien on certain property, the joinder being authorized by a statute of Idaho. The question arose with reference to the jurisdictional amount, neither claim amounting to $2,000, although the joint claim did. In discussing the effect of this statute authorizing joinder in connection with the immediate question of jurisdiction, the court expressly held that such a statute could not control the practice in the Federal courts to the extent of modifying the existing law recognized by such courts.

In a case which led to similar reasoning, Judge Sanborn of the Circuit Court of Appeals, Eighth Circuit, held that a decision of the Kansas court that a count for monies due could not be joined to a count for monies not due, could not be invoked in a suit in the Federal courts to defeat their jurisdiction by reason of the fact that neither of the demands alone, but only both together, exceeded $2,000. In that case it was said by the court:

"It was not the intention of Congress to require by the passage of this act of conformity the adoption of the Circuit Court of any rule of pleading, practice or procedure enacted by state statute or announced by the decision of the state court which would enlarge or restrict the jurisdiction of the Federal courts or prevent the wise administration of the law in the light of their own system of jurisprudence as defined by their own constitution, as tribunals, and the acts of Congress upon every subject. On the other hand, the act expressly reserves to the judges of these courts the right, and, we think, imposes upon them the duty, in the exercise of the wise judicial discretion, to reject any statute, practice or decision that would have such effect. Our views of the effect of this act of Congress, and of the right and duty of the judges of the Federal courts to reject statutes of the various states, rules of practice, and decisions of state courts that are antagonistic to the Federal system of jurisprudence, or that tends to defeat the end of justice as administered in the Federal tribunals, are well illustrated by the decisions upon this question rendered by the Supreme Court since the passage of this act, in 1872."

O'Connell v. Reed, 56 Fed. 536.

The Federal reports contain many illustrations of the refusal of the Federal courts to comply with the procedure fixed by the state courts. This is especially true where the practice in the Federal courts is well established, and where new departures have been taken by the state court's interpretation of the common law.

In *Wall v. Chesapeake & Ohio Ry.*, 95 Fed. 398, the Circuit Court discusses at length the limitations of the conformity rule, cites many cases illustrating it, and says:

> "Furthermore, it was never intended that the provisions for uniformity should extend to modes of procedure established by judicial interpretation of the common law, but only to such as are established by the statutes of the several states. The United States courts are supposed to be able to find out for themselves what the common law is, without being bound to follow meekly and without question the decision of the state court where they happen to be sitting."

See also *Shepherd v. Adams*, 168 U. S. 618-16.

Hanks Dental Association v. International Tooth Crown Co., 194 U. S. 303-310.

Mexican Central Ry. Co. v. Pinkney, 149 U. S. 194.

Wilcox v. Hunt, 38 U. S. 378.

N. Y. Central Jewel Filtration Co. v. City of Sullivan, 111 Fed. 181.

Curtis v. Central Ry., Fed. cases No. 3501.

Finally, even upon the assumption that divers plaintiffs with separate demands under the Sherman Act may join in suing, it appears from the complaint that the five non-operating companies are wholly without any alleged rights of action. In the first place the averments of their assumed rights are badly pleaded: "were financially interested in one or more of the aforesaid operating companies either through contracts or the lease of coal lands on which said operating companies were working, or through the ownership of all or the majority of the stock of said operating companies." Such disjunctive averments create utter indefiniteness and are wholly vicious as pleading. If it be said that the remedy in such a case is a motion to make more specific, we answer that this course was appealed to without result (Rec. pp. 217-218, par. 2 of Motion), as well as by a motion to strike out (Rec. pp. 214-217). This motion, so far as it pertains to this paragraph of the complaint, was overruled with exceptions.

Waiving the disputed character of the averments, which leaves the court without any certain information as to the alleged interests of the five non-operating companies—what interests can be imputed to them? Generally, "a financial interest in one or more of the operating companies," first, by reason of certain contracts or leases, or second, by certain stock holdings. Now a mere financial interest in an operating coal company does not authorize the party holding the interest to join the operating company in an action of this character. The fact that one of the plaintiffs had leased coal lands to another would not authorize a joinder. If it did, every farmer whose land was leased could join in the action. This would apply equally to the case of a land owner whose rented or leased property was occupied by some manufacturing concern engaged in inter-state commerce. It would open the door to a motley array of plaintiffs, each claiming his right to be heard in the one case, because of what he terms his financial interest in the company really aggrieved. This reasoning applies equally as well to the pretense that holding stock in an operating company authorizes the stockholder to join in an action under this statute. Were this true, what limitation could be put upon the plaintiffs entering suit?

The orders requiring the unincorporated labor unions and their officers to produce from their files books, writings and documents for the alleged purposes of proving the officers and members of those unions guilty of the criminal conspiracy were violative of their constitutional rights under the Fourth and Fifth Amendments to the Federal Constitution.

A judicial order requiring a party to produce documents for the use of his adversary in a civil proceeding may be violative of the Fourth and Fifth Amendments to the Federal Constitution providing against unreasonable searches and compulsory self-crimination. Primarily such an order is not deemed an unreasonable search or seizure within the provision of this constitutional guarantee. But it may become so (1) when the order is not a reasonable one itself, or (2) when it requires the party to produce documents which may tend to

prove him guilty of a crime, or subject him to the processes of a penal action.

Boyd v. U. S., 116 U. S. 616.

In a later case a distinction was pointed out between the rights which a corporation may claim and those which an individual may assert under this application of the search and seizure guarantee.

Hale v. Henkel, 201 U. S. 43.

The reasons assigned in this opinion for modifying the ruling as it affects the production of the books and papers of a corporation would not apply to the case at bar. It was therein held that a corporation, functioning under its charter from the state, can not claim the right under this amendment which may be asserted by an individual, and special emphasis is placed upon the powers and limitations under which it operates by reason of its charter grant. But that situation does not prevail with the Miners' Union, with District 21, or with any of the locals. They operate under no charter and are nothing but voluntary, unincorporated societies of individuals. It is of further interest that in the Hale case the court said:

> "We are also of the opinion that an order for the production of books and papers may constitute an unreasonable search and seizure within the fourth amendment. * * * Applying the test of reasonableness to the present case, we think the subpoena *duces tecum* is far too sweeping in its terms to be regarded as reasonable. It does not require the production of a single contract, or of contracts with a particular corporation, or a limited number of documents, but all understandings, contracts and correspondence between the MacAndrews-Forbes Company and no less than six different companies, as well as of reports made and accounts rendered by such companies from the date of the organization of the MacAndrews-Forbes Company, as well as all letters received by that company since its organization from more than a dozen companies, situated in seven different states of the Union."

Hale v. Henkel, 201 U. S. 43-76.

It has been held that civil actions under the Sherman Anti-Trust Act are not penal in their nature, so far as questions have arisen regarding the general procedure thereunder. In the appeal which a party to such an action may make to his constitutional guarantee under the Fourth Amendment against unreasonable searches and seizures, it would seem plain that such an action would be penal in its nature within the meaning of the Boyd case.

Casatt v. Mitchell Coal Co., 150 Fed. 32.

Parsona v. Chicago R. Co., 167 U. S. 447.

The above cases were suits under the Interstate Commerce Act, to recover excess charges and counsel fees, and were deemed penal in considering this question of the compulsory production of documents. The damages recoverable by the verdict in the case at bar are "actual damages," the amount allowed by the judgment is treble these actual damages, and in addition to the ordinary costs, there is an assessment of plaintiffs' counsel fees.

Further, the evidence sought by the plaintiffs, if available to them in a civil suit, would tend to establish the criminal guilt of the defendants under the same statute. It was asserted in the petition that the evidence sought would establish this guilt. The theory of the plaintiffs below was that this was a continuing conspiracy. If the order can be made in a civil suit between private parties, where its admitted purpose is to compel the party ordered to produce evidence tending to establish his guilt under the criminal statutes of this government, then a new rule must be announced.

Wilson v. United States, 221 U. S. 361-79.

Ballman v. Fagin, 200 U. S. 186-95.

Counselman v. Hitchcock, 142 U. S. 547.

The Circuit Court of Appeals recognized the effect of these orders but held that the petitioners' labor unions and their officers were not entitled to the protection of the constitutional guaranties under the authority of *Hale v. Henkel,* 201 U. S. 543, and *Wilson v. U. S.,* 221 U. S. 361. In these cases the

Supreme Court has held that corporations, as creatures of the state and subject to its visitorial powers, are not entitled to invoke the constitutional shield when they or their officers are ordered to produce the corporate records and files; but the reasoning of those cases excludes the application of the doctrine they announce to unincorporated societies. The members of these labor unions have not incorporated themselves, have no charter from the state and they do not exist by reason of any grant from the state. They are purely voluntary associations, whose members, whether officers or not, continue to have their constitutional rights, which it would seem could not be impaired even by a statute.

It was error to hold that the testimony of William Green that certain printed books contained verbatim reports of the proceedings of the joint conferences between miners and operators, or the testimony of other witnesses that the books contained correct statements of said proceedings, constituted a proper foundation and authentication in law for the original use of such books in evidence by reading extracts therefrom, as showing what was said by the parties therein quoted.

The books themselves are primarily hearsay, containing a printed recital of what some one else said, whose original source was the stenographer reporting the debate, and whose secondary source was the printer who printed the transcription of such notes. The books were not introduced to prove their contents in the sense that the contents were in issue as in the case of libel. The sole purpose of reading the extracts from the books was to prove thereby what was actually said on the various occasions by operators and miners.

> "The law therefore in its wisdom rejects hearsay, regardless of whether it is written, verbal or acted * * * the rule, too, is so sweeping that it excludes such written hearsay irrespective of the mode in which it is presented—very often in the form of official records, but more frequently according to the particular commercial transaction to which it relates. * * * The fact that hearsay is printed, no matter in what form, does not alter the applica-

tion of the rule. When the introduction of a newspaper in evidence has been permitted, the court characterized it as 'hearsay evidence twice removed.'" *Jones on Evidence*, Vol. 2, Sec. 298 (301).

Even the notes of a shorthand reporter containing the testimony of a witness, in those jurisdictions allowing their use, must be introduced by the reporter using them to refresh his memory or testifying that he made them at the time and that they are correct:

"Under the general principles of evidence the notes of testimony taken by stenographers, judges, justices of the peace, attorneys and other officers or persons, would seem to be inadmissible as evidence on the ground that such notes are hearsay." *Jones on Evidence*, Vol. 2, Sec. 343 (346).

The courts have gradually included the court reporters' notes within that class of public documents which, because of their recognition by law and the solemn formality which attends their creation, are, when properly proven by the party making them, admitted in evidence.

"As regards many documents—those of the descriptive classes, like deeds and wills, by virtue of which conveyances are made or other local results accomplished—the hearsay rule has no necessary application to them. As to many others which merely serve a recording and evidential purpose, their solemnity or the formality with which they are attended or the usual habits of mankind in preparing and keeping them often give them a credit which broadly separates them from that second-hand reporting of ordinary oral speech which chiefly answers the notion of hearsay." *Thayer, Cases on Evidence*, p. 314, note; *Chamberlayne, Modern Law of Evidence*, Sec. 3555.

The printed books involved are far removed from the rule governing shorthand notes in testimony. In the present case the books were offered on their identification and the statement by Mr. Green that they were *verbatim* reports. Under the conditions of this offer they were wholly without merit as primary evidence. (*Ruch v. Rock Island*, 97 U. S. 693-5.)

Nor would the fact that the books were produced from the archives of the labor unions, or that they were considered by the labor unions or the operators as official reports, render them official in the meaning of the law that official documents and books are admissible in evidence. This rule has reference to books which are official under some provisions of the law. (*Bradford v. Bradford*, 51 N. Y. 669; *Cashin v. N. Y. M. H. Ry.*, 185 Mass. 543; *Baird v. Reilly*, 82 Fed. 884.)

The motions for directed verdict should have been sustained.

The primary question here involved was the effect of the evidence in establishing a conspiracy actionable under the anti-trust laws. This evidence has been given its strongest probative force in the analysis by the Circuit Court of Appeals, which, summarized, may be stated as follows: (1) The Miners' Union had a definite policy to organize all the members of the craft, and to protect the union workers in fields already unionized against the non-union mine workers by securing the unionization of all fields; (2) that this policy contemplated the end of the production of non-union mined coal, and involved the members of the union in concerted action to prevent the production of non-union mined coal; (3) that the district and locals were agencies of the national organization in accomplishing this policy; (4) that strikes were one of the recognized and adopted means of promoting this policy, and that in general jurisdiction over all strikes was either originally exercised by, or could be asserted by, the national officers and executive board; (5) that the controversy with respondents arose out of the pursuance of said policy of the Miners' Union, and that by reason of it growing out of this conspiracy and as a strike being subject to the jurisdiction of the national officials, the Miners' Union as a whole are properly chargeable under the Federal anti-trust laws with the tortious act which resulted in the damage to respondents' various properties.

This was a suit under the Federal anti-trust statute and the following questions naturally arise: Was the policy of

the mine workers in seeking the organization of the miners in every district and at every mine unlawful under the Sherman act in its purpose or effect? This might be simply answered by the statement that the imputed purpose was not in restraint of trade or commerce at all; that it did not contemplate the reduction of tonnage, but only the changing of the condition as regards labor under which that tonnage was produced. But let us make a more detailed analysis of the situation:

If this policy of the mine workers, in the matter of its purpose and results, was a conspiracy under the Sherman act, then every effort of a labor union, whose members labor on products designed for interstate commerce, to extend the organization of their craft would be a criminal conspiracy in restraint of trade. In every instance the object would be to transform the articles produced under non-union conditions into merchandise produced under union conditions; and by the reasoning applied in this case to the policy of the miners, that purpose would necessarily be to reduce and destroy the production of and commerce in the non-union merchandise thus involved. In each case the object might be framed as it was in the court's instruction:

> "To prevent the production of non-union goods that they might not compete with union-made goods."

The frame of the accusation does not prevent a logical resolution of its substance. The interest of the miners lay in standardizing wages and conditions of employment. They could not expect to organize, say West Virginia, and then shut down its mines. The Miners' Union stands like every other labor union interested in the wages and working life of the craft. This was the object of the union; and the effect of its struggles, either in increasing the market price of coal, or in lessening the tonnage of the "non-union mined" product, would not, therefor, be an unlawful restraint of trade. In such cases the effect on the market is indirect and merely incidental; while the disappearance of the "non-union mined" coal from trade is not a disappearance of the product, as coal, but merely of the conditions of labor under which that product

is mined and which alone gives it its distinguishing name.

U. S. v. Standard Oil Co., 221 U. S. 1.
U. S. v. Knight, 156 U. S. 1.
Hopkins v. U. S., 171 U. S. 578.
Kidd v. Pearson, 128 U. S. 1.

In the Knight case the Supreme Court said:

"Contracts, combinations or conspiracies to control domestic enterprise in manufacture, agriculture, mining, production in all its forms, or to raise or lower prices or wages, might unquestionably tend to restrain external as well as domestic trade, but the restraint would be an indirect result, however inevitable, and whatever its extent, and such restraint would not necessarily determine the object of the contract, combination, or conspiracy."

The question here involved must be decided by the "rule of reason" laid down in the Standard Oil case. It is for the court to say whether under all the facts shown by this record the United Mine Workers of America had for their object any other purpose than the unionizing of mine labor. It is not now a question of the methods they may have employed. The question at this point is what was the object and purpose of any conspiracy that can be charged against them? Nor is it a question whether members of a labor union may not engage in conspiracies in restraint of trade. The Hatters' case has been cited as though the only question was whether workingmen can so conspire. But in the Hatters' case the boycott adopted was itself, in its direct purpose and in the application of the instrumentality thus invoked, an immediate and direct interference with interstate commerce.

In the present case, the direct purpose and effect must be to convert non-union tonnage into union tonnage; in other words, to organize the labor employed in the production. The Hatters' case responds to the rule of reason, but does not bring this case within that rule by parallel or analogy. Suppose, however, that in the Hatters' case it had not been a boycott, but the complaint was that the members of the Hatters' Union were conducting a strike or series of strikes to secure the

unionizing of the hat factories of plaintiffs and others. And suppose, further, that this policy was even characterized as one having for its purpose the ending of the production and commerce of non-union made hats. Such a case would be parallel with the case at bar, under the broadest contention of respondents. But is it not plain that such a case would fail to comply with the rule of reason in showing any direct and immediate interference with commerce? If the answer be "No," by that answer the Federal courts must assume jurisdiction over every strike which has for its purpose the unionizing of a plant whose products pass into interstate commerce.

Mining itself is not commerce. In the *State of Arkansas v. K. & T. Coal Co.*, 96 Fed. 353, the court held that coal mining was not interstate commerce. In deciding the case, Judge Rogers said:

> "It is argued at the bar that coal mining is not interstate commerce. This court so held in *U. S. v. Boyer*, 85 Fed. 425, where a full discussion of what it takes to constitute interstate commerce and a collection of adjuducated cases may be found."

In *D. L. & W. Ry. Co. v. Yurkonis*, 238 U. S., is a case where a carrier was operating a coal mine in connection with its railway business; the coal mined was shipped by the carrier in interstate commerce to purchasers outside of the state of Pennsylvania, and also used by it in running its interstate trains. Yurkonis was a coal miner and was injured in the mines of the company. He sued under the Federal employers' liability act, claiming that the railway company was engaged in interstate commerce in producing coal. The court held that producing coal is not interstate commerce, and that he could not recover for his injuries under the Federal act on that account.

If the policy of the mine workers be not illegal in its purposive nature, does the method with which the court claims it accomplishes that purpose render the combination illegal? This question might be summarily answered by saying that

the illegality of the method employed does not bring the confederacy within the act. The act may be unlawful and wrongful, and may establish a right in the complaining parties. But the question here is to their right under the Federal anti-trust statutes.

But let us examine the District Court's conclusions as to these methods: the instrumentality referred to is the resort to strikes. It was not asserted by the court, nor can it be claimed here, that there was any evidence (outside the immediate controversy at Prairie Creek) establishing the charge that the Miners' Union had unlawfully contemplated strikes elsewhere, or had conducted strikes with violence at any other time or place. The declared policy of a labor union may be to so conduct a strike that it will be an unlawful interference with trade, as, for example, in the case of the rule of the Brotherhood of Locomotive Engineers, which provided that where a strike occurred on one line, the members working on connecting lines should not receive or handle the freight of the line against which the strike was declared. *Waterhouse v. Comer*, 55 Fed. 149.

So other conduct of the members of a union may be unlawful, as with boycotts. No such questions are involved in the constitution or laws of the Miners' Union or in the facts appearing in this record. The provision in the constitution referred to by the court was the second in Article 2:

> "To increase the wages and improve the conditions of employment of our members by legislation, conciliation, joint agreements or strikes." (Rec. 419.)

So far as the laws of this union are concerned, they contemplate lawful strikes. Strikes themselves are not illegal *per se*, either at common law or under the Federal statutes. Obviously, a strike can be called only where a labor union has members. The effort is first made to organize some or a substantial part of the labor at any particular plant. Only then can a strike become possible. It may be followed by methods that the courts recognize as lawful, in enlarging the ranks of the strikers and rendering the strike more effective,

or this result may be sought by unlawful means. Where such unlawful means have been denounced by the courts, they have been pointed out in the record of the facts. The decisions are few and archaic which hold that a strike is presumably illegal, and in the present case no presumption can be entertained that the strikes contemplated by the constitution of the mine workers, or by their so-called policy, were intended to be illegal, and no presumption that the union has followed the policy for years of conducting unlawful strikes. In this respect the District Court entered into a fundamental error. No testimony was submitted showing that a single strike or labor dispute (apart from the controversy with the defendants in error) had ever been improperly conducted by the United Mine Workers of America or any of its branches. And we submit that the trial court should not have indulged in the presumption he did or have undertaken to assume judicial knowledge to the contrary. The reasonable presumption would be, in the absence of proof to the contrary, that the customary policy of the Miners' Union in reference to strikes was to conduct them in a lawful manner.

If there be no sufficient foundation for this charge of a general conspiracy on the part of the union, District 21, and the locals sued, there should have been a directed verdict for them. This was the theory upon which the complaint was drawn and the evidence introduced by the respondents; the union miners of the nation, sued in the union name, and the union miners of Arkansas, Oklahoma and Texas, sued in the name of District 21, were held at the bar for a verdict on the theory that, being confederated in a conspiracy to restrain trade by the machinery of unlawful strikes, they became responsible for the violence that attended the troubles at Prairie Creek. So the inquiry must be as to the general conspiracy.

Furthermore, the United Mine Workers of America submitted a series of instructions to the effect that each of the corporations suing, and the receivers, had failed to establish a cause of action, and that as to each, in several instructions, the verdict should be for the defendant below. District No.

21 likewise submitted a series of instructions to the same effect. Each of those instructions were refused. The instructions thus submitted, asking separately for a directed verdict against the Coronado Coal Company, the Prairie Creek Coal Mining Company, the Mammoth Vein Coal Company and the Mammoth Vein Coal Mining Company, were predicated on the propositions that the union, as such, could not be sued under the provisions of the Sherman and the Clayton acts, that the causes of the plaintiffs were improperly joined and that no conspiracy in restraint of trade had been proven; and as to the Denman Coal Company, the Bache-Denman Coal Company, the Hartford Coal Company, the Sebastian County Coal Company and the Mammoth Vein Royalty Company, the instructions were predicated upon the propositions stated with reference to the other companies and also that each failed to prove that they were engaged in interstate commerce or that they had suffered any injuries whatever.

The Bache-Denman Company did not offer any proof to show that it had been damaged, except that it claimed to be a holding company, holding a majority of stock in the Coronado Coal Company (P. R. 1999); and, further, that it was a guarantor on the bond of the Mammoth Vein Coal Company, guaranteeing the payment to the Rock Island Railroad Company the freight on a certain amount of tonnage per annum to be shipped from the Mammoth Vein Coal Company's mine (P. R. 2310-11). The law is well settled that this company could not recover either as a stockholder or as a creditor, and this instruction ought to have been given.

Loeb v. Eastman Kodak Co., 183 Fed. 704.

United Copper Security Co. v. Amalgamated Copper Co., 244 U. S. 261.

As to the Denman Coal Company, there was no testimony submitted of any loss that it had sustained.

Evidence was submitted to the effect that the Hartford Coal Company had sustained a loss in the destruction of certain parts of its mine equipment at the "Dallas mine." In the complaint it was stated that this company was not in opera-

tion on April 1, 1914, but was intending to resume operations. With reference to this intention, Mr. Denman, one of the officers of the company, testified that it had been closed down for over a year, because there was not sufficient demand for coal to authorize its operation (Record 1974-5). In *Dowd v. United Mine Workers*, 235 Fed. 1, in which the court reviewed the ruling on the demurrer to the second amended complaint, the Circuit Court of Appeals held that on general demurrer such an averment might be held sufficient to authorize a recovery on the authority of *Pennsylvania Sugar Refining Company v. American Sugar Refining Company*, 166 Fed. 254. We submit that the proof did not bring the Hartford Coal Company within the rule laid down in the Sugar Refinery case where the intention and preparations for conducting an interstate business were immediate. If the rule is to be so extended as to cover the right of a mining company in the admitted condition of the Hartford Coal Company, then it will become inclusive of mines and factories in any conceivable state of abandonment or non-production, on the theory, which may always be true, that the intention sometime is to have the plant renew business and re-engage in interstate trade.

In regard to the Mammoth Vein Royalty Company, there was no testimony submitted of any loss incurred or damage suffered by it, not any effort to establish such damage or to submit to the jury any facts from which such damage could be adduced or inferred.

Among the exhibits offered by respondents was a lease on coal land by the Mammoth Vein Royalty Company, October 1, 1904, to the Mammoth Vein Coal Company (Rec. 2264). It is not claimed nor shown by the record that this lease was lost or canceled. It called for the payment to the lessor of a royalty of eight cents per ton on the coal mined from the tract described. It may be said that the jury could infer that the value of this lease was impaired by the destruction of the mine of the Mammoth Vein Coal Company. But there was no effort made to show that the coal from this particular land was being taken out through the mine of the

lessee, and it would require, not an inference, but a bald supposition, to conclude that the lessor was injured by reason of any fact proven in this case. Either the lease continued in existence or it was canceled. If it continued in existence, presumably this would be through the lessee continuing to pay the lessor according to its terms. If it was canceled (about which there was no testimony), it appears from other evidence introduced that coal land in this vein has been since leased for a royalty as high as fifty cents per ton. This was shown by the lease that the receivers made to Millmeier (Rec. 2254). Under such circumstances, the situation of the lessor would have been improved. But all of this is mere conjecture; and we submit that the record fails to disclose any facts upon which the Mammoth Vein Royalty Company can make any pretense of a claim to a verdict.

The Sebastian County Coal Company, like the other non-operating companies above referred to, had no mine, and was engaged in neither the production nor commerce of coal. With respect to this company, it was testified by Mr. Denman that certain coal land was held under lease by the Sebastian County Coal Company, they being the lessees thereof, and obliged to pay a certain royalty thereunder; and that they, in turn, had sublet this lease to the Coronado Coal Company at a higher tonnage royalty (Rec. 1993-4). This was the Boone lease which was canceled by judicial order, September 5, 1915, for the non-payment of $2,334 royalties, which had become delinquent in December, 1913. It was the theory of the plaintiffs below that the loss of this lease by this judicial proceeding was the proximate result of the wrongful acts complained of. And upon this theory, the witness Denman testified that the value of the lease to the Sebastian County Coal Company was $15,000 (Rec. 1994). In other words, after showing the loss the Coronado sustained through the cancellation of this lease by reason of the terms of its contract, this was the testimony as to the loss sustained by the intermediary leaseholder, namely, the Sebastian County Coal Company. Thus there was testimony, if proper, of a loss sustained by the Sebastian

County Coal Company. But we submit that the facts show that the loss of the lease was not the proximate result of the alleged wrongful acts of plaintiffs in error. First, the lease was cancelled a year after this suit was instituted; second, in the record introduced by defendants in error, it was disclosed by the petition of Boone that the unpaid royalties for which the lease was cancelled had become delinquent in December, 1913—months before the controversy had arisen between the parties to this action. There is no claim there was any trouble between the respective parties to this cause before April 1, 1914; third, the lease was cancelled by judicial order in consideration of the release of the delinquent royalties mentioned. Presumably that was its value to both the Sebastian County Coal Company and the Coronado Coal Company September 1, 1915, and the court having charge of these receiverships directed the cancellation on this consideration.

Granting these non-operating companies the proof they failed to submit, their damage would still be "indirect, remote and consequential." Under the Sherman act, can a landlord recover for lost rents because his tenants' or lessees' plant is destroyed? If a canning factory, engaged in interstate commerce, acquired a right of action for such a conspiracy, this doctrine would draw in its train the equal right of the farmer to recover a loss he had sustained under a contract he held to supply the cannery with vegetables. All sorts of consequential claims could thus be prosecuted under the Federal act, and a new field opened to litigation somewhat awry with "the rule of reason."

The propriety of these several instructions becomes more manifest when consideration is given to the ruling of the court allowing a verdict in an unapportioned sum to these several plaintiffs on the theory finally adopted by the Circuit Court of Appeals that they had a joint cause of action. If it be argued that respondents were suing as possessed of a joint cause of action, then the failure of one or more of them to show any right of recovery would defeat the entire cause.

It was error for the District Court to recall the jury after two days' deliberation and give them an instruction, (a) that coerced a verdict for respondents; and (b) that allowed them to believe it was their proper duty to return such a verdict, that the question of the legal responsibility of the United Mine Workers be determined by a higher court.

This instruction has been set out in full in the petition and will not be here again quoted. In its majority opinion the Circuit Court of Appeals questioned the sufficiency of the exception taken by petitioners to the charge. This exception was "May I take an exception to that part of the charge with reference to the great conspiracy, and also that part which is to the effect that the organization put that in force? The court: Yes, sir, in the opinion of the court, you are entitled to your exception;" and in the majority opinion the court held that the instruction lay within the fair rights of the trial court and could not be said to have coerced a verdict by reason of the statements therein contained, to-wit: "You are the sole exclusive judges of the facts, and it is for you to determine those issues of facts independent of my judgment." The situation disclosed by the record and the inevitable effect of the instruction is well set out by Hook, J., in the dissenting opinion:

> "It should be borne in mind that the trial court did not regard the case at bar as one for a directed verdict against the defendants, nor do my brothers hold differently in the foregoing opinion. It was a case for the jury, and if in effect the verdict was directed by the court, error was necessarily committed.
>
> "In the foregoing opinion the exceptions to the charge are held insufficient to raise this question. The exceptions might have been more specific, but I think the intention of counsel was sufficiently evident and that the trial court understood it. But whether this is so or not is not now decisive of our duty. A recent amendment, of section 269 of the Judicial Code approved February 26, 1919, provides: 'On the hearing of any appeal, certiorari, writ of error or mo-

tion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties.' The matter under discussion was of vital importance and is well within the above provision. It was not an inadvertence or casual ruling in the progress of the trial to which specific objection or exception was necessary to inform the court and give it opportunity for correction, but it was a deliberate action going to the very root of the judgment now under review."

Judge Hook thereupon quotes the instruction, italicizing certain parts thereof, and adds:

"Of course, the court said it was for the jury to determine the facts, and that they were not bound by its opinion, etc.; but are not such expressions wholly futile in the compelling force of the above? There are occasions in which the statement of a principle of law is but an academic formula. Can it reasonably be said after such a charge that the jury felt free to exercise their own independent judgment? The question whether the well-established province of a jury is invaded is to be judged by the natural effect of the charge upon the minds of the jurors. How did they feel about it? Did they feel free to exercise their functions independently, or were they constrained by the intrusion of the personality and power of the judge, and the fear of his displeasure, ridicule or contempt? In this case they were reminded of their oaths; they were told that they would not be discharged, but had to return a verdict; that there was no reason on earth why they should not agree; that failure to render justice would bring the court into contempt; that there was no question in the mind of the court about the evidence; that it was overwhelmingly one way, meaning against the defendants; and that they were a stumbling block in the way of the final determination of the legal responsibility for the acts charged."

It was error to not require the jury in its verdict to apportion the damages recovered by the several respondents.

It was the theory of defendants in error that separate causes of the complaining corporations could be originally joined in one suit, at their election, under the Arkansas consolidation statute. The fundamental error involved in this joinder has been discussed elsewhere. Assuming, however, that such a joinder was proper, it still remains obvious that each of the complaining companies had its separate chose in action and claim for damages. The complaint proceeds upon the theory that each company suffered damages respective to itself. The testimony followed this theory, and yet the court received a joint verdict assessing damages against petitioners in favor of the respondents on the new theory that their rights of action were hotchpotted and that they had a unity and community of interest in the damages recovered. The verdict is as follows:

> "We, the jury, find the issues in favor of the plaintiffs and against the defendants and assess plaintiffs' actual damages at $200,000.00. John Dunnigan, Foreman." (Rec. 3237-3254.)

Upon the reading of this verdict, and while the jury was yet at the bar, the following proceedings were had:

> "Mr. Grant: I would like to except to the form of the verdict for the reason that, as we understand it, the verdict of the jury should apportion damages.
>
> "The Court: The court is of the opinion that that is true where actions are consolidated and where there are different pending actions. This, however, is only one action. For instance, if there were three actions brought by A, B and C, then you have in your files pleadings in each, then it is true that apportionment should be made, but here the form of the complaint was made and I assume preliminary motions were made."
>
> "Mr. Grant: We made the motion, Your Honor, but that was not passed on in the Circuit Court of Appeals,

and we raised the question, and Judge Youmans overruled us on it."

"The Court: You are entitled to your exceptions."

The Circuit Court of Appeals tentatively questions the sufficiency of this exception, though it finally assumes its sufficiency for the purposes of a decision on the point. As shown by the above quotation from the record, the exception was fully understood by the court as suggesting an apportionment of the damages recoverable by respondents.

That this is the proper practice, see

Copper River Railway Co. v. Reed, 221 Fed. 111.
A. T. & S. F. Ry. Co. v. Phipps, 125 Fed. 478.
Hodges v. Bailey, 102 Ark. 200.
Lynch v. State, 95 Ark. 168.
Hammer v. State, 104 Ark. 607-615.
Hobbs v. Clarks, 53 Ark. 411-414.
First National Bank v. Foster, 61 Pac. (Wyo.) 466-8.

The respondent companies averred their separate damages and sued as consolidating their causes under the Arkansas practice. This question has been heretofore considered, but assuming that the consolidation was proper, the question involved in the return of the verdict for a gross sum has been directly decided by the Supreme Court of the United States in a case where a consolidation of separate causes was directed by the court.

"But although the defendants may lawfully be compelled, at the discretion of the court, to try the causes together, the causes of action remain distinct and require separate verdicts and judgments, and no defendant can be deprived, without his consent, of any right material to its defense, whether by way of challenge of jurors, or by objections to evidence, to which he would have been entitled if the causes had been tried separately."

Mutual Life Ins. Co. v. Hillman, 145 U. S. 285.
Oliver v. Alexander, 6 Peters 143-5.
Keeps v. Indianapolis Ry. Co., 10 Fed. 454, 38 Cyc. 1884.

Miller v. Hoe, 1 Fla. 189.

The exact question arose in another cause in the Federal courts where consolidated cases proceeded to judgment. The court said:

"It is attempted to be maintained in argument that the motion of the company for the consolidation of the causes for trial was so connected with its suggestion that only one verdict should be returned, and one judgment be entered, that the refusal of the court to direct a single verdict relieved the company from the responsibility of having insisted that the causes be heard as one. This contention is inadmissible. By the action of the railway company two questions were presented to the trial court for decision: (1) Shall the causes be heard as one before the same jury? (2) If so, in what form shall the verdict be returned? The court granted the request of the company that the three causes be heard at the same time before the one jury, and the company is now estopped from questioning the correctness of a ruling which it asked to have made, and for which it is primarily responsible. * * * The court then decided that the jury should be required to return three verdicts, and not one, as asked by the defendant. It is open to the defendants to aver that the court erred in its decision on this question, but no argument is needed to show that the court decided correctly. If a single verdict had been returned, and a single judgment had been based thereon, exceeding an amount of $5,000, the defendant company would have secured the right of appeal to the Supreme Court of the United States, with all its attended delays, but no other possible advantage would have accrued to the defendant company. On the other hand, the rights of the plaintiff in the several actions would have been seriously affected if the trial court had ordered the return of a single verdict, and had rendered a single judgment, because it would have been impossible to determine what part or proportion of the sum awarded as damages belonged to each of the several plaintiffs. The court was therefore clearly

right in directing that the jury should return a verdict applicable to each case; thus showing the damages awarded to each one of the several plaintiffs."

Union Pacific Ry. v. Jones, 49 Fed. 343-4.

In *Central Vermont Ry. Co. v. White*, 238 U. S. 507, a verdict in an unapportioned sum was returned in a suit under the Federal employers' liability act. The Supreme Court held this verdict proper, because the suit was by the administrator "for the benefit of the widow and next of kin." The right of recovery under that act was pointed out to be one of a fund for the common enjoyment of the beneficiaries designated in the act—as by an administration of an estate realized by the death claim. Such a ruling is manifestly correct, both by reason of the language of the statute, which provides how the suit shall be brought and for whom, and also by the reason of the fact that the laws provide for the distribution of such funds and fix the tribunal for their administration.

In *Chesapeake & Ohio Ry. Co. v. Kelly*, 241 U. S. 485-7, the Supreme Court held with reference to this liability act: "The act of Congress does not require in such cases that damages be apportioned among the beneficiaries."

There is nothing in these decisions, therefore, to suggest legality of a joint verdict in a consolidation cause. In fact, the reasons invoked in them suggest that the verdict in the present suit would wholly fail to answer the requirements of our practice. And in an earlier decision of the Supreme Court, under the same liability statute, it was held that the verdict should have been apportioned. This was the case of *Gulf C. & S. F. Ry. v. McGinniss*, 228 U. S. 173. In the White decision, it is said, with reference to the opinion in the McGinniss case, "It must be read in the light of the record then before the court." The record in the McGinniss case discloses that the suit was not only for the ordinary beneficiaries of the decedent's livelihood, but for one married daughter who was living with her husband. Obviously the interest she had in maintenance by her father was not only a question of evidence, in which the defendant had a right to be

heard, but a matter upon which the defendant had a right to have the damages found by the record. The verdict was for $15,000, apportioned one-half to widow and the other half divided among the children. This verdict was held bad, as there should have been an apportionment, a view which is not criticised in the later case, but explained by the facts in the earlier record. But, of these cases under the liability act, the McGinnis case is the only one throwing real light on the point involved in the case at bar. Obviously these complaining corporations were not equally interested in the damages they sought; and, apart from the fact that the anti-trust statutes do not provide for such joint suit or suits to recover a joint fund, and apart from the fact that the distribution can not be made by a Probate Court under any laws of distribution and descent—the fact obtrudes that the petitioners were entitled to have the record disclose what damages were being found in favor of the different respondents by the reason, among others, of the disparity of their claims.

The practice in Arkansas would not govern in this case brought under a Federal statute, but even the practice there does not authorize such a verdict. In the most extreme application of the rule adopted by that state, that parties may, under its consolidation act, originally join their causes in bringing suit, the court recognizes the necessary and inherent severalty of the demands. In *Southern Anthracite Coal Company v. Thrasher et al.*, 93 Ark. 140-3, where two persons were injured in a mine and joined in a suit for their injuries, a verdict was returned in favor of one for $5,000, and in favor of the other for $500. A Texas decision is correctly stated in the syllabus of the case thus:

> "Where parties whose rights were separate and distinct were improperly joined as plaintiffs, though such misjoinder must be pleaded or be waived, yet when, without such plea, the case is submitted on special issue, there should be separate findings as to such plaintiffs suing in their distinct rights."
>
> *Silliman v. Gano*, 90 Tex. 637.

This question is thoughtfully analyzed in a Massachusetts decision. The court says:

"Where special causes are pending between the same or different parties which grow out of a single transaction, or which involves an inquiry into the same event in its general aspect, although the details of evidence may vary materially in fixing responsibility, the court may order them tried together. But they continue separate so far as concerns docket entries, verdicts, judgments, and all aspects save only the one of a joint trial." (Citing cases.)

Lumiansky v. Tessier, 213 Mass. 182-8.

The Massachusetts court goes on to point out that where the consolidation is one of demands that might properly have been originally joined, as suits between the same parties on several demands, the consolidation may be regarded as a fusion, and one verdict returned. This arises from the very nature of the issues, and the reason is one that distinguishes such a case from the instant one, where several parties are suing in their several rights and are necessarily entitled to several recoveries. It involves a strange conception of the law to hold that the respondents were suing in a joint right, or that by some chemistry of legal practice their several rights had somehow become fused.

We repeat, the theory of respondents in bringing their suit was not that they had a unity of interest in the damages sought, but that the joinder of their several choses in action was authorized by the practice prevailing in Arkansas under its consolidation statute. That the state practice would not govern pleadings in the Federal Court, which are regulated by the Federal consolidation act, has been argued elsewhere. But this was the theory of the complaint. In Paragraph 2 the separate incorporations of respondents were set out. In Paragraphs 3 and 4 four of the companies are averred to have been operating companies, and their separate operations, including the number of men employed and annual shipments by each, are alleged; and the assumed rights of action of the five non-operating companies are presented in averments of

their financial interest "in one or more of the operating companies." (Rec. 181-182.)

The evidence of separate holdings and respective losses of certain companies were presented in accordance with this theory of their complaint. Under these facts there would seem to be no question about the verdict being improper in form. That the receiver was appointed for all of these companies in one suit would not change the rights of action which the several companies had into a joint right. The receiver would still be the receiver of each company, of its respective assets, including choses in action.

> "The appointment does not affect existing contracts or rights between the party whose property is placed in the hands of the receiver and others; he still has no greater rights or advantages than those possessed by his principal."
>
> *Beach on Receivers, Sec.* 684.
>
> *High on Receivers,* Sec. 204.

This, of course, was the legal situation with the respondents. And that their rights in severalty were recognized in the ordinary affairs of these receiverships appears from the testimony offered by respondents. Over objections they read in evidence a lease contract made April 2, 1917, between C. H. Finley and H. P. Hilliard, receivers for the Hartford Coal Company, parties of the first part, and the Roughley-Patterson-White Coal Company, parties of the second part, leasing certain property that belonged to the Hartford Coal Company (Rec. 2276); and also a similar contract between C. H. Finley and H. P. Hilliard, receivers for the Mammoth Vein Coal Company and the Mammoth Vein Royalty Company, and W. H. Miellmier, granting certain mining rights in lands whose interests were claimed solely by the two named companies. This lease was executed June 28, 1917 (Rec. 2254). The rights in severalty under these receiverships were recognized by the court appointing them, in the separate judicial orders of cancellation of certain leases belonging to the Prairie Creek Coal Company, the Mammoth Vein Coal Company and the

Coronado Coal Company, as of their independent and separate assets. (Rec. 2371-5, 2375-7.)

It can not be reasonably claimed that the damages recovered below were to be enjoyed in common by respondents. They can not be administered on as the joint assets of these corporations.

If it be said that the petitioners are not interested in and can not question the form of the verdict, we respectfully submit that the right to do so is universally recognized. If a party to an action is to be adjudged to pay damages, he has the right to insist that the forms of the judicial process be observed. He certainly has a right to know for whose benefit he is being mulct. If a number of causes are combined and proceed to verdict and judgment, the defendant obviously has the right to know what finding of damages was rendered in favor of the one plaintiff and what finding in favor of another. Upon this depends his opportunity for a review of such findings, either before the trial court or on appeal, in so far as he might wish to challenge the recovery of any particular plaintiff. The practice followed in the case at bar is anomalous. No authority for it exists, and it is violative of all principles applicable to litigated issues.

In view of the errors of fact on which the opinion of the Circuit Court of Appeals is based, and the errors of law involved in the opinion and decision of said court, we respectfully urge that a Writ of Certiorari should issue, and that upon a hearing of said cause the judgment of said Circuit Court of Appeals should be in all things reversed.

Respectfully submitted,

G. L. GRANT,

WEBB COVINGTON,

HENRY WARRUM,

Attorneys for Petitioners.

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No. [redacted]

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1919

United Mine Workers of America et al.,
Petitioners

v.

Coronado Coal Company et al.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

G. L. GRANT,
WEBB COVINGTON,
HENRY WARRUM,
Attorneys for Petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1919

United Mine Workers of America, District No. 21 of the United Mine Workers of America, John P. White, P. R. Stewart, Fred Holt, John P. White as President of the United Mine Workers of America, P. R. Stewart as President of the United Mine Workers of America, District No. 21, William McLaughlin, William McLaughlin as President of United Mine Workers of America, District 21, Tom King, Tom King as Board Member of United Mine Workers of America, Jess Edwards, Charley Farley, Edward Cunningham, Edward Cunningham as President of District 21, United Mine Workers of America, Frank J. Hayes, Frank J. Hayes as Vice-President of United Mine Workers of America, William Green, William Green as Secretary-Treasurer of the United Mine Workers of America, Joe Overman, O. A. Brooke, Dr. W. C. Chambers, Tom Kiger, Mike Cisco, Charles Hendry, Jim Lee, Jake Thompson, George Burnett, Pink Dunn, Jim McNamara, Pete McMullen, John Mastell, James Slankard, and Local Unions Numbered 340, 560, 1130, 1159, 1526, 1530, 1565, 1810, 1814, 1824, 1842, 1912, 1934, 2027, 2053, 2110, 2160, 2316, 2494, 2766, 2769, 2770, 2772, 2841, 2880, 374 and 586, of the United Mine Workers of America, M. B. Appleby, Bruce Jordan, Whit Miller, Ed Baker, H. S. Treadway, G. G. Daniels, John Turnipseed, Lewis Evans, Joe Coneoda. B. Trout, Joe Assola, Joe Kervillas, William Rodden. Charles Blackburn, Joe Lanier, Albert Hunter, Rich Handlin, Scott Adkins, Frank Petty, Claude Litchford, John Litchford, Otto Alimen, Carey Crumpton, Sam

Wooten, Marion Hulsey, Maje Hulsey, Tom Watson, Derwood Warren, Harry Burkett, Willis Congo, Leslie Congo, Bud Congo, Charles McKown, J. W. Howard, Bud Williams, William Price, Peter McMullen Jr., John Murry, John T. W. Davis, Brock Smith, Ed Kehee,
Petitioners.

v.

Coronado Coal Company, Denman Coal Company, Mammoth Vein Coal Company, Bache-Denman Coal Company, Hartford Coal Company, Sebastian County Coal Company, Mammoth Vein Coal Mining Company, Mammoth Vein Royalty Company, Prairie Creek Coal Mining Company, each and all by C. H. Finley and H. P. Hilliard, Receivers, and C. H. Finley and H. P. Hilliard, Receivers,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

To the Honorable the Supreme Court of the United States:

The petition of the United Mine Workers of America, District No. 21 of the United Mine Workers of America, and the Local Unions of the United Mine Workers of America above named, and the individual petitioners above named, shows to this Honorable Court as follows:

1. That on the 1st day of September, 1914, the above named respondents, as plaintiffs, filed in the District Court of the United States for the Western District of Arkansas, Fort Smith Division, their complaint against the petitioners herein as defendants, in which they alleged that said defendants had formed a conspiracy, averred to have been in violation of the Act of July 2nd, 1890, commonly known as the Sherman Anti-Trust Law, and which conspiracy had resulted in their separate damages aggregating the sum of $427,820.77, for which sum they asked treble damages.

The process against the petitioners, labor unions, was served upon their officers, motions to quash the same being overruled.

That thereafter respondents filed a second amended complaint and the petitioners demurred to the same upon the ground that (a) the court had no jurisdiction of the person of the defendants or of the subject matter of the action; (b) that the defendant labor unions are unincorporated societies incapable of being sued; (c) and that there was a misjoinder of parties plaintiff and of their causes of action.

That on October 25, 1915, the District Court sustained said demurrer on the sole ground that the court had no jurisdiction of the cause as one arising under the Anti-Trust Law.

Thereafter the respondents carried the case by Writ of Error to the United States Circuit Court of Appeals for the Eighth Circuit, the same being docketed as *Dowd, Receiver, et al., vs. United Mine Workers of America, et al.* The Circuit Court of Appeals thereafter in a written opinion filed on July 21, 1916, reversed the judgment of the District Court and remanded said cause for further proceedings, holding that the unions could be sued in their association names and that the complaint stated a cause of action under the Anti-Trust Law (235 Fed. 1), the mandate in full being found at page 163 in the Printed Record filed herewith.

2. That thereafter, on the 27th day of February, 1917, the said respondents filed in the District Court their third amended complaint, which is in substance as follows, to-wit:

That in the case of the *Coronado Coal Company, et al., vs. Sebastian County Coal and Mining Company, et al.,* No. 246, In Equity, Franklin Bache, in a single decree was appointed a receiver for the plaintiff companies, and C. H. Finley and H. B. Hilliard are now serving as receivers in succession.

That the Hartford Coal Company, the Mammoth Vein Coal Company, the Mammoth Vein Coal Mining Company, the Coronado Coal Company and the Prairie Creek Coal Mining Company were at the time of the appointment of said receiver and for many years prior thereto operating coal companies engaged in the production and shipment of coal for interstate trade and commerce from coal land located in Sebastian County, Arkansas.

That prior to April, 1914, the Mammoth Vein Coal Mining Company entered into a written contract with the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company, in which it agreed to operate the mines of the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company and mine coal for them.

That the Denman Coal Company, the Bache Denman Coal Company, the Sebastian County Coal Company, the Mammoth Vein Coal Company and the Mammoth Vein Royalty Company, and each and every one of them, were *financially interested in* one or more of the *said operating companies,* either through contracts or lease of coal lands on which said operating coal companies were working, or *through ownership of all, or the majority of the stock* of the said operating companies.

That the United Mine Workers of America is an unincorporated association of mine workers engaged in the work of mining and shipping coal in different mines throughout the United States; that it is subdivided into about thirty districts and numerous local unions, the latter being a part of a particular district having jurisdiction of the territory in which such local is situated; that every member of any such local and district is a member of the United Mine Workers of America and subject to the rules laid down in its constitution and by-laws, as well as the constitution and by-laws of the said various districts and local unions having jurisdiction over them respectively; that the membership of the said United Mine Workers of America exceeds 400,000 miners.

That each of the district branches and local unions are agencies created by the United Mine Workers of America to carry out the purposes of said National Organization; that District No. 21 has jurisdiction over all of the local unions named in the complaint; that said local unions are unincorporated associations of mine workers in the state of Arkansas, having a separate president and secretary upon whom process may be served, and the members of each of said local unions are so numerous as to make it impracticable to make all of said members defendants, and pray that said local unions be brought into court by service upon their respective officers.

That John P. White is President of the United Mine Workers, and that because the members of said local unions are so numerous it is impossible to make each one a party defendant, but that the said union is represented in District No. 21 by the president of said district, the members of the executive board of said district and the vice-president and secretary-treasurer of the National Organization, who sufficiently represent the United Mine Workers for the purposes of this action, and the service of process upon them, and the trial of the suit in which they are parties will constitute proper representation of the United Mine Workers.

That the members of this union were and for a long time had been among themselves, and also with the bituminous coal operators of the country employing union labor, engaged in a criminal conspiracy in violation of the Federal Anti-Trust Laws, to restrain the production and commerce in non-union mined coal; that one of the objects of the conspiracy was to monopolize the trade or occupation of mining coal for the members of said labor union; and that in furtherance of the conspiracy the defendants had ordered strikes of employes in unorganized mines in different states, and by violence prevented the employment of miners in said mines and by fire and dynamite destroyed the facilities of unorganized mines for producing and shipping coal in interstate commerce.

That in March, 1914, the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company discontinued operations, intending to later reopen on the open shop basis; that the Hartford Coal Company had not operated for over a year previous to April, 1914, but it was the intention of said company to later reopen on the non-union basis; that the Coronado Coal Company continued to operate as a non-union mine until April 18, 1914, when a strike of its employes occurred in furtherance of the unlawful conspiracy, and it was the intention of said Coronado Coal Company that its mine should be placed upon a non-union basis by the summer of 1914; that it was the intention to have the Mammoth Vein Coal Mining Company operate the mines of the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company under its written contract above described.

That the defendants, knowing the plans of plaintiff companies, in furtherance of said unlawful conspiracy, did, by threats, intimidation, violence and unlawful assemblies, drive away all of the men employed by said mines, and by threats, violence, murder, mobs and riots, prevented the said coal companies from employing any other persons to mine, load or ship coal, and by the use of fire, dynamite and other explosives, destroyed the facilities of said mines for the production, loading and shipment of coal, and destroyed the cars of interstate carriers at the mines to be loaded or already loaded with interstate shipments; that by said unlawful means the defendants and those acting in conjunction with them prevented any of said companies from engaging or continuing to engage in interstate trade or commerce.

Plaintiffs thereupon alleged their separate damages as follows:

Prairie Creek Coal Mining Company	$281,057.70
Mammoth Vein Coal Company	117,210.34
Mammoth Vein Coal Company	192,953.44
Coronado Coal Company	89,696.72
Hartford Coal Company	28,214.97
Sebastian County Coal Company	17,661.10

Mammoth Vein Royalty Company----------	4,000.00
Bache Denman Coal Company----------	4,245.15
Denman Coal Company----------	5,650.00

Said complaint is found in full at pages 179 to 201 of the Printed Record filed herewith.

3. That on the 17th day of March, 1917, the several defendants filed their separate demurrers to the third amended complaint, the United Mine Workers of America and the local unions (named as petitioners herein) demurring upon the following grounds:

(a) The court has no jurisdiction of the person of the defendants or of the subject matter of the action, because it appears from the complaint that the acts complained of were not an interference with interstate commerce nor a violation of the Federal Statutes upon which the complaint is predicated.

(b) That the complaint shows upon its face that the defendants are each a voluntary and unincorporated association or labor union, not organized for profit, not carrying on or engaged in any kind of business, and has no legal entity apart from its membership, and is not capable of suing or being sued.

(c) That the complaint shows upon its face that the plaintiffs named therein have no such community of interest in the money sued for as to entitle them to sue jointly, and that there is a misjoinder of parties.

(d) That the complaint shows upon its face that the plaintiffs named therein have no joint interest in the money sued for, that their interests are separate, several and distinct, and that there is a misjoinder of causes of action.

(e) That the complaint does not show that the defendants have monopolized or are about to monopolize any part of the plaintiffs' trade or commerce within the meaning of the Sherman Anti-Trust Law.

That on the same date the individual defendants demurred to the third amended complaint upon the same grounds stated

in the demurrer of the United Mine Workers and the local unions, except as to the specification which pertains to the power to sue unincorporated associations in their association names.

The said demurrers are set out in full at pages 207 to 209 of the Printed Record filed herewith.

That thereafter, on the 21st day of March, 1917, the said demurrers were overruled, each of the demurring defendants duly excepting at the time. (P. R. 3239.)

4. That on May 2, 1917, the United Mine Workers of America and the local union defendants, and District No. 21, severally moved the court to strike from the complaint the names and pretended causes of action of each of the said plaintiffs joining in said complaint, on the ground that it is not shown by the complaint that the plaintiffs have a community of interest in the relief sought and that therefore there is a misjoinder of plaintiffs and of causes of action. Said motion is set out in full at page 214 of the Printed Record filed herewith.

That said motion was overruled on May 10, 1917, with exceptions to each of said defendants. (P. R. 223.)

5. That on July 7, 1917, the United Mine Workers of America filed its separate answer to said complaint and on said date answers were likewise filed by District No. 21, the local unions sued and each of the individual defendants. Said answers are set out in full at pages 238 to 268 of the Printed Record filed herewith, said answers denying said conspiracy and the liability of the defendants to respond to the said plaintiffs in damages, the labor union defendants affirmatively pleading their character as unincorporated societies, that neither of said labor unions are engaged in the production, sale or transportation of coal, and that their members are en-

gaged in the occupation of mining coal, each for himself, and performing labor in and around coal mines; that no member or officer of the organization is authorized or empowered to act for said labor unions except as determined by the constitution of the unions, which do not authorize any of the illegal acts set out in the complaint, and also that each of said plaintiffs is a separate corporation and that neither of them has a community of interest with the others in the subject of the action or the money sued for.

6. That the respondents filed their certain motions to require the labor unions and their officers to produce certain books, documents and papers for respondents' inspection and use at the trial, said motions averring that the writings sought to be produced would establish the criminal conspiracy alleged. (P. R. 292, 303, 309 and 315.)

That on September 21 and 28 and October 13, 1917, the court made its several orders requiring the defendant labor unions and their respective officers to make such production, which was done over the protest and exception of the petitioners. The said books, documents and papers briefly stated were as follows:

(a) All letters in possession of John P. White, written to him by Peter Stewart, Fred Holt and James Mullen, between April 1, 1914, and January 1, 1915, and copies of all letters of the said John P. White to any of the said persons during the said period.

(b) Transcript of the minutes of the International Executive Board, United Mine Workers of America, from April 1, 1914, to January 1, 1915.

(c) The printed volumes of the United Mine Workers' Journal from January 1, 1892, to April 26, 1916.

(d) Each volume of the Miners' Convention proceedings from 1898 to 1916.

(e) All the printed proceedings of the joint conventions held between United Mine Workers of America and the coal operators from 1898 to 1916.

(f) The convention proceedings of the United Mine Workers of America, District 21, from 1914 to 1916.

(g) The expense accounts of James Mullen, John P. White and K. C. Adams from April 1, 1914, to March 1, 1915.

(h) All contracts in effect during March, April, May, June and July, 1914, between the United Mine Workers of America, or any district branch thereof, and any union coal operators in the United States and Canada.

(i) The reports of all officers of District 21 for 1914, 1915 and 1916.

(j) The several treasurers' reports, expense accounts, or memoranda of disbursements of funds of said local unions, showing the disbursements for union purposes of the funds of the said local unions for 1914, 1915 and 1916.

(k) List of the members of the respective local unions for 1914, 1915 and 1916.

(l) All cancelled checks and stubs of check books showing disbursements of the funds of District 21, from April 1, 1914, to January 1, 1916.

Said orders are set out in full at pages 301, 313 and 324 of the Printed Record filed herewith.

7. That upon the issues joined the cause proceeded to trial before a jury, the Honorable James D. Elliott presiding. The evidence heard is found in the Printed Record filed herewith from pages 364 to 3176.

8. That at the trial, over petitioners' objections and exceptions, respondents were allowed to read in evidence a large number of extracts from speeches and arguments found in certain printed books purporting to contain reports of the proceedings of various joint conferences of bituminous coal operators and representatives of the Miners' Union held from

1902 to 1914 in the Central Competitive Field. These extracts were offered as original evidence of the statements of the parties quoted and for the purpose of proving the alleged conspiracy between the operators and union miners. The extracts are so numerous and voluminous that it is impracticable to summarize them and they are found in full in the Printed Record at pages 556, 565, 570-573, 578-590, 583-595, 597-602, 605-612, 1066-1071, 1074-1119.

9. At the conclusion of the hearing of evidence the defendant labor unions severally moved the court for directed verdicts on the ground that there was not sufficient evidence to warrant a finding being returned against them, which motion was overruled with exceptions. (P. R. 350-351, 3187.)

10. After the jury had deliberated without results for about two days, the trial court, of its own motion, recalled the jury and gave them the following, peremptory instruction:

"The Court: Gentlemen, the court understands you have not agreed upon a verdict yet. Is there anything that the court can say to you that will be of help to you now?

"Juror Dunnigan: There is nothing that I know of, Your Honor, not on my part.

"The Court: What seems to be the stumbling block in the way of an agreement?

"Juror Dunnigan: We don't understand the evidence alike; we do not see it alike; we do not agree.

"The Court: Are there any questions that individuals would like to ask the court?

"Juror Dunnigan: None that I know of.

"Now, Gentlemen of the Jury, this is a pretty serious situation, and I want to say to you that the court has no thought at all of discharging you. You were sworn upon your oath to do your duty as jurors. In the opinion of the court there is no reason on earth why reasonable men with a due regard for right, and each having due respect and consideration for the other's opinion, should not arrive

at a conclusion in this case. What would be a fortune to either of you, or I, has already been spent and a failure to render justice in this and others is what brings the courts into contempt. I say this to you that you may understand the seriousness of your situation. The facts in this case have got to be found by a jury. Another jury will have no better opportunity of knowing what these facts are, or be in any better position to determine these facts than you, and it is your duty as jurors under your oaths to get together and return a verdict.

"Now, the Federal Courts recognize the right of this court under these circumstances to say what this court believes in relation to the facts in this case, and you are advised that this court is of the opinion that the facts in this case justify you in the conclusion overwhelmingly that it was the policy and, therefore, the agreement for years of this National Organization to prevent mining of non-union coal for the unlawful purposes named in this complaint that it might not come into competition with union mined coal; that there is no question in this court's mind but that that strike was ordered down there for the purpose to prevent the mining of non-union coal in these plaintiffs' mines; that the strike was called by those who were the instrumentality of the greater organization, the general organization, the defendants, and their act was its act, and that they put into motion the force that destroyed this property, and that that force was put in motion for the purpose of preventing the mining of that coal, the shipping of that coal, the running of these mines. Why, this court has not a thought that there would ever have been any trouble there if it had not been for the prevention of the mining of non-union coal. Now, that is the judgment of this court, and if it were my duty to decide it, I would decide it here. Now, you are not bound by my opinion. I have the right to give you my judgment; however, you are the sole and exclusive judges of the facts, and it is for you to determine, and this court believes you ought to determine it and under your oath as jurors agree upon a verdict.

"If there is any question about the law on the responsibility for this responsibility of the greater organization, this is for the higher court to say, but you cannot reach it until you have done your duty—you are the stumbling block in the way and this whole time is wasted. Now, after I have said what I have, I am going to say that I have no thought of discharging you; you must return a verdict in this case. You are amply qualified to do the right thing as you see it, and as it should be done, and the thought of this court is that no other jury will ever be better prepared to render a verdict than you, and to separate without a verdict will be to have rendered all this expense of all this trial for naught—make it necessary to go all over the ground again, with no better opportunity on the part of the jury in the box, when it has all been done, to do the right thing than you have now, no advantage—none in the world. You see the importance of the situation, and I now urge you with the idea of doing the right thing and putting this matter in that condition that a trial of the case with a legitimate end, in which a verdict of the jury will place it. And with a knowledge and feeling of responsibility, and that responsibility is with you, that you now return to your jury rooms and bring in a verdict."

To which an exception was reserved by petitioners. (P. R. 3235.)

11. The jury thereupon returned a verdict for respondents as follows:

"We, the jury, find the issues in favor of the plaintiffs, and against the defendants, and assess plaintiffs' actual damages at $200,000.00. John Dunnigan, Foreman."

Upon the reading of the verdict, and while the jury was yet at bar, exceptions were taken by petitioners to the form of the verdict, on the ground that the verdict should have apportioned the damages. (Rec. 3237.)

12. That thereafter judgment in the sum of $600,000.00, with costs and attorneys' fees, was rendered on said

verdict, whereupon the petitioners within competent time carried the said cause by Writ of Error to the United States Circuit Court of Appeals for the Eighth Circuit, and submitted the same upon certain assignments of error and upon a transcript of the record of proceedings had in the trial court, said assignments of error being set out in detail in the Printed Record submitted herewith, pages 3244 to 3356.

That on the 28th day of April, 1919, said judgment was affirmed by the Circuit Court of Appeals by a majority opinion of Sanborn and Trieber, JJ, Hook, J, dissenting (P. R. 3414-3438), and the court retained said cause on petition of petitioners herein for rehearing, which petition for rehearing was by said court overruled and denied on November 15, 1919. (P. R. 3450.)

13. The petitioners say that it was error on the part of the District Court and the Circuit Court of Appeals to hold that the labor unions sued were entities against which an action could be instituted, process had and judgment recovered. Said ruling should be reviewed by this Honorable Court:

(a) On the former hearing, *Dowd v. United Mine Workers of America*, 235 Fed. 1, the Court held that the labor unions could be sued in their society names, and on the last hearing declined to review this decision, holding that it was the law of the case, thereby again holding that the unions could be sued. In the Dowd decision the court held that "in the absence of a specific statute to the contrary, the rule at common law and under the codes is that an unincorporated association is not recognized as having a legal existence apart from its members," but that "it has also been ruled that the common law rule that only entities known to the law are capable of being sued may not only be modified by express enactment, but also by statutory implication," and the court then held that the provisions of section 8 of the Sherman Act to-wit: "the word 'person'

or 'persons,' wherever used in this Act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country," by implication authorized an action for damages under the Sherman Act against an unincorporated labor union; whereas, the word "association" as used in said Act must be construed with its associate word, "corporation," and held to include only such associations as are created under a federal, state, territorial or foreign statute.

(b) In so holding the Circuit Court of Appeals expressly recognized the departure from the common law and the novelty of the question as arising under the statute, in the following language: "The question as to liability of an unincorporated labor union to be sued under the Act of July 2, 1890, in the name of the association, does not seem to have been discussed in any reported case which we have been able to find."

(c) The importance of the question is apparent, as it involves the relation of the union coal miners to the law in their local, district and national societies; and necessarily involves the legal status of all unincorporated labor unions, especially those engaged in producing articles used in interstate commerce.

(d) In the Dowd decision the Court acknowledged the doubtfulness of their ruling in the following words: "If we are correct in our view that voluntary unincorporated associations are included in the word 'association' as used in section 8." And this frankly announced doubt underlying a judgment of such importance warrants a review and determination of the question by this Court.

(e) The importance of the question further appears in the uncertainty attending such process and judgment, viz: Whether it results in a judgment at law against all of the members of the union, and becomes enforcible against their separate property.

(f) Before the cause was heard the Clayton Act became effective which, by its terms, deprived the plaintiffs of any right to hold the union, *as such*, for damages, section 6 thereof providing: "Nor shall such organization, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."

14. The petitioners say that it was error on the part of the District Court and of the Circuit Court of Appeals to hold that there was a proper joinder of plaintiffs and of their several causes of action. This joinder was justified by the Court of Appeals under the Arkansas Consolidation Act of May 11, 1905 (Acts 1905, p. 798), which is a copy of the Federal Consolidation Act of July 22, 1813 (3 Stat. L. 21), but the Arkansas statute does not assume to convert consolidated causes into a joint cause of action. And in view of the Federal Consolidation Act, and the decision of *Mutual Life Insurance Company v. Hilman*, 145 U. S. 285, holding that under the Federal Act the consolidation is a matter for the *Court's discretion*, the conformity practice act does not apply and the joinder was improper. This ruling should be reviewed because:

(a) The Federal Anti-Trust Acts provide special proceedings for damages wholly cognizable in the Federal Courts, and by "any person who shall be injured in his business or property," making it clear that *each person* must bring his suit alone.

(b) The ruling is a striking departure from the Federal practice as it has been established under the Federal Consolidation Act.

(c) The effect of the ruling of the Circuit Court of Appeals is to deprive the defendants in such cases of having the damages recovered apportioned among the various plaintiffs.

15. The District Court erred in requiring the petitioners to produce for the inspection and use of respondents at the trial their private books, writings and documents, because if available to respondents for the purpose of establishing their claim that petitioners were engaged in a continuing criminal conspiracy, the order requiring such production was violative of the Fourth and Fifth Amendments to the Federal Constitution, and the Circuit Court of Appeals erred in sustaining said orders. Said ruling should be reviewed:

(a) These unincorporated societies are not corporations. They exist only in their membership, who still enjoy their constitutional rights. The Circuit Court of Appeals extends the doctrine of *Hale v. Henkle*, 201 U. S. 543, and *Wilson v. U. S.*, 221 U. S. 361, that corporations and their officers may not invoke these constitutional guaranties against unreasonable search and being compelled to give self-incriminating evidence, to unincorporated societies and their officers, which is a ruling of grave importance, wholly without authority.

16. The District Court erred in allowing the respondents to read in evidence numerous extracts from printed records of the joint conference proceedings between operators employing union labor and representatives of the United Mine Workers of America in the Central Competitive Field; and the Circuit Court of Appeals erred in confirming this ruling:

(a) Because the testimony of Mr. Green, Secretary of the United Mine Workers of America, that the printed books were "verbatim reports of the arguments, discussion and propositions of what took place at those conferences; that the Association caused them to be printed and the printed volumes produced were the ones that came back from the printer," was not a sufficient authentication in law to authorize the original use of these books for the purpose of proving by reading extracts therefrom what was said by the respective parties quoted at the time referred to in said books.

(b) That the District Court and Circuit Court of Appeals erred in holding that the testimony of witnesses that the printed volumes were correct transcripts of the proceedings of the conferences constituted a proper foundation and authentication in law for the introduction of the printed volumes in evidence.

(c) It was this evidence largely that lead the court to instruct the jury "this court is of the opinion that the facts in this case justify you in the conclusion overwhelmingly that it was the policy and therefore the agreement for years of this National Organization to prevent mining of non-union coal for the unlawful purposes named in this complaint that it might not come into competition with union mined coal." At most this evidence but proved an agreement between the miners and operators to secure a complete unionizing of mine labor, which, under the "rule of reason," was not actionable under the anti-trust laws.

17. The District Court erred in not directing a verdict for the petitioners, and the Circuit Court of Appeals erred in confirming the ruling of the trial court:

(a) Because the evidence did not disclose that the United Mine Workers of America as a labor union was engaged in a conspiracy in restraint of trade by reason of its policy to organize its craft and to bring an end to the production of coal under non-union conditions by means of strikes, and that it therefore became responsible as a union under the provisions of the Federal anti-trust laws for the damage inflicted upon the respondents' property growing out of the local strike at their mines.

(b) In *Loewe v. Lawlor*, 235 U. S. 522, this Court clearly recognized that liability in such cases should be limited to those members who were proven to have participated in the wrongful conspiracy or who have ratified it, and none other. In this case the organization, in other words the entire membership, is held responsible without any effort to prove that all the members have participated in or ratified the conspiracy—an extension of the rule which

is of grave importance to all unincorporated labor unions (of shifting membership) engaged in the production of articles used in interstate commerce and having the policy of completely unionizing their craft.

18. The District Court erred in recalling the jury after two days' deliberation and instructing them: "that this Court is of the opinion that the facts in this case justify you in the conclusion overwhelmingly that it was the policy and, therefore, the agreement for years of this national organization to prevent mining of non-union coal for the unlawful purpose named in this complaint, that it might not come into competition with union mined coal. * * * If there is any question about the law on the responsibility of the greater organization, this is for the higher court to say, but you cannot reach it until you have done your duty. You are the stumbling block in the way and this whole time is wasted. Now, after I have said what I have, I am going to say that I have no thought of discharging you; you must return a verdict in this case. * * * You see the importance of the situation and I now urge you with the idea of doing the right thing and putting this matter in that condition that a trial of the case with a legitimate end, in which a verdict of the jury will place it. And with a knowledge and feeling of a responsibility and that that responsibility is with you, that you now return to your jury rooms and bring in a verdict," and the Circuit Court of Appeals erred in sustaining this instruction of the trial court:

(a) As said by Hook, J., of the Circuit Court of Appeals, dissenting, "the language employed by the Court was so forcible that it virtually coerced a verdict."

(b) The Court charged that the question of the union's legal responsibility was for the higher court, which could not be determined until the jury had rendered a verdict (meaning a verdict for respondents, as indicated by

the court), and that, in the language of the dissenting opinion, the jury "were the stumbling block in the way of a final determination of the legal responsibility for the acts charged." This was also destructive of petitioners' fair right to a jury trial, for its effect was to indicate the need of a verdict that the way might be prepared for an appeal by the petitioners and the determination in the higher courts of their legal responsibility.

19. The District Court erred in refusing to require the jury by their verdict to apportion the damages recovered by the various respondents; and the Circuit Court of Appeals erred in sustaining this ruling. This ruling should be reviewed:

(a) The theory of the complaint was that the plaintiff companies suing had separate causes consolidated in the filing of their original complaint, and that this practice was authorized under the Arkansas Consolidation Act. But this local statute did not transform their separate causes, thus consolidated, into a *joint cause* of action, and under the Arkansas practice such joined or consolidated causes call for an apportioning of the verdict. (*Southern Anthracite Coal Co. v. Bowen*, 93 Ark. 140-3; *St. L., I., M. & S. Ry. v. Broomfield*, 83 Ark. 288; *Johnson v. Ditlinger*, 215 S. W. 694, decided November 17, 1919.)

(b) Under the Federal practice consolidated causes "remain distinct and require separate verdicts and judgments." (*Mutual Life Ins. Co. v. Hillman*, 145 U. S. 285.)

(c) The Circuit Court of Appeals justify their ruling by *K. C. S. Ry. Co. v. Leslie*, 238 U. S. 599-603, where the verdict was rendered in a gross sum under the Federal Liability Act. Under this act suit must be instituted by the administrator "for the benefit of the widow and next of kin," and in *Chesapeake & Ohio Ry. Co. v. Kelly*, 241 U. S. 485-7, this Court held "the Act of Congress does not require in such causes that the damages be apportioned among the beneficiaries." No similar provisions are found in the

anti-trust laws, nor is there any authority for a verdict in gross sum in consolidated causes under the anti-trust laws.

(d) As to the Denman Coal Company and the Mammoth Vein Royalty Company, there was no evidence tending to show any damages whatever; as to the Hartford Coal Company and Sebastian County Coal Company, the evidence was too indefinite to authorize any assessment of damages. As to the Bache-Denman Coal Company, a holding company not engaged in the coal business, its sole claim was that it had become a surety on a bond of the Mammoth Vein Coal Company to the Rock Island Railway Company, guaranteeing the payment of a minimum freight charge per annum on coal shipments, upon which, by reason of the destruction of the Mammoth Vein Coal Company's mines, it had become liable. But there was no evidence that it legally owed or had paid the railroad any sum as guarantor or that any judgment had been recovered against it.

Even if it had suffered damages in its character as a guarantor, it has been held by the Circuit Court of Appeals in the Third Circuit that such an injury would be "too indirect, remote and inconsequential" to authorize a recovery. *Loeb v. Eastman Kodak Co.*, 183 Fed. 704. And in so far as the rule of this case sustains such right, it should be reviewed by this Court.

Your petitioners show that the questions involved in this case are of great public importance, affecting the constitutional and legal rights of many hundreds of thousands of citizens, including four hundred thousand union miners, and also the members of other labor unions of the country who are necessarily affected by these decisions; that many of the questions profoundly affect the members of all unincorporated societies, and that other questions presented deal with important principles of law and rules of practice.

Wherefore, your petitioners respectfully pray that a writ of certiorari may be issued out and under the seal of this Court, directed to the United States Circuit Court of Appeals

for the Eighth Circuit, commanding the said Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all of the proceedings of the said Circuit Court of Appeals in the case therein entitled "United Mine Workers of America, et al., plaintiffs in error, v. Coronado Coal Company, et al., defendants in error, No. 5154," to the end that the said case may be reviewed and determined by this court, and that your petitioners may have such other and further relief or remedy in the premises as to this court may seem appropriate, and that the said judgment of the said Circuit Court of Appeals in the same case, and every part thereof, may be reversed by this Honorable Court.

And your petitioners will ever pray, etc.

United Mine Workers of America, District No. 21 of the United Mine Workers of America, John P. White, P. R. Stewart, Fred Holt, John P. White as President of the United Mine Workers of America, P. R. Stewart as President of the United Mine Workers of America, District No. 21, William McLaughlin, William McLaughlin as President of United Mine Workers of America, District 21, Tom King, Tom King as Board Member of United Mine Workers of America, Jess Edwards, Charley Farley, Edward Cunningham, Edward Cunningham as President of District 21, United Mine Workers of America, Frank J. Hayes, Frank J. Hayes as Vice-President of United Mine Workers of America, William Green, William Green as Secretary-Treasurer of the United Mine Workers of America, Joe Overman, O. A. Brooke, Dr. W. C. Chambers, Tom Kiger, Mike Cisco, Charles Hendry, Jim Lee, Jake Thompson, George Burnett, Pink Dunn, Jim McNamara, Pete McMullen, John Mastell, James Slankard, and Local Unions Numbered 340, 560, 1130, 1159, 1526, 1530, 1565, 1810, 1814, 1824, 1842, 1912, 1934, 2027, 2053, 2110, 2160, 2316, 2494,

2766, 2769, 2770, 2772, 2841, 2880, 374 and 586, of the United Mine Workers of America, M. B. Appleby, Bruce Jordan, Whit Miller, Ed Baker, H. S. Treadway, G. G. Daniels, John Turnipseed, Lewis Evans, Joe Coneoda, B. Trout, Joe Assola, Joe Kervillas, William Rodden Charles Blackburn, Joe Lanier, Albert Hunter, Rich Handlin, Scott Adkins, Frank Petty, Claude Litchford, John Litchford, Otto Alimen, Carey Crumpton, Sam Wooten, Marion Hulsey, Maje Hulsey, Tom Watson, Derwood Warren, Harry Burkett, Willis Congo, Leslie Congo, Bud Congo, Charles McKown, J. W. Howard, Bud Williams, William Price, Peter McMullen Jr., John Murry, John T. W. Davis, Brock Smith, Ed Kehee, by

G. L. GRANT,
WEBB COVINGTON,
HENRY WARRUM,
Attorneys for Petitioners.

VERIFICATION.

State of Indiana, Marion County, ss:

G. L. Grant, being duly sworn, says that he is one of the attorneys and of counsel for the petitioners above named, and as such has had personal charge (with other attorneys and counsellors) of said case in the District Court of the United States for the Western District of Arkansas, and in the United States Circuit Court of Appeals for the Eighth Circuit; that he has read the said petition by him subscribed, and that the facts therein stated are true to the best of his information and belief.

G. L. GRANT.

Subscribed and sworn to before me this —— day of January, 1920.

_____,
Notary Public.

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In the Supreme Court of the United States.

OCTOBER TERM, 1920. NO. 239.

United Mine Workers of America, et al, *Plaintiffs in Error*,

vs.

Coronado Coal Company, et al, *Defendants in Error*.

IN ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

The important questions involved in the present writ of error are presented by a record of almost 3500 pages and are discussed by plaintiffs in error in a most elaborate brief.

Certain of the errors specified are highly technical, which, from the point of view of plaintiffs in error, they would doubtless prefer to have the Court consider on as narrow a basis as possible, without regard to the relation of the point in question to the rest of the case.

One of the principal errors relied on is in connection with a portion of the charge of the trial Judge dealing with the facts of the case, and drawing what plaintiffs in error contend are unwarranted inferences therefrom.

In a record as voluminous as the present no one point can properly be viewed entirely by itself, apart from the atmosphere of the whole case, particularly where it involves merely a question of evidence, proof, or procedure; nor can the trial Judge's charge be properly understood without a knowledge of the record on which it is based.

Accordingly, after a brief reference to the principal legal question involved, we have made a summary, as condensed as possible from a record of this size, of the case which the plaintiffs made in the trial court, stating the plan and legal theory on which we asked our recovery and the evidence offered to substantiate it.

In the succeeding pages where the discussion refers to the proceedings in the trial Court, the parties are referred to as they stood therein,—plaintiffs and defendants. Figures in parentheses not otherwise designated refer to printed pages of the present Record.

The Principal Question Involved.

The crucial question here presented is whether a labor union is liable, under the Sherman Anti-Trust Act, for damages inflicted by its duly constituted officers and representatives, in the furtherance of its collective aims and purposes, in the course of a combination and conspiracy in restraint of interstate commerce.

The verdict of the jury on which the present judgment is based is conclusive of the following facts:

That the United Mine Workers of America, acting through its District and Local Organizations which under its constitution had been created by it to carry out its associate objects, by threats, intimidation, force and violence, murdered, injured or drove away all plaintiffs' employees from its mines and then deliberately burned its tipples, dynamited its slopes, destroyed its machinery,

flooded its mines and ruined or carried off its movable property, including in the destruction cars of coal loaded on railroad cars and billed to points in other states; that all this was done with the intent and for the purpose of preventing the plaintiff from shipping its coal mined under open shop conditions, to other States, in competition with the coal there mined under closed shop contracts; that as a result the plaintiffs' properties were ruined, they were left insolvent and their leases forfeited; that both during and after the destruction the United Mine Workers, through its Official Journal and by the action of its accredited officers and its delegates in convention assembled, applauded and approved of what had been done.

The verdict, $200,000, was less than one-third of the amount of damages proved and not disputed, and less than half the amount which the United Mine Workers Journal boasted had been suffered by plaintiffs.

Aside from technical questions of evidence, proof and procedure, the sole defence by the Union is that, since it is not incorporated, it is beyond the reach of the law.

Although it has a membership of upwards of 400,000 men, bound together by a constitution to carry out its objects, which objects constitute the sole business and livelihood of its members; although it has an organization as highly centralized as it would be possible to create, with innumerable District and Local Branches chartered and created by the Main Organization to carry on its activities and do its bidding and subject to discipline or annulment by it for refusal so to do; although it has vast associate funds, mounting into the millions, delegated to its officers to be used in carrying on its business, and which, as in the present case, may be employed solely by unlawful means and with an unlawful purpose to crush those who stand in its way; nevertheless, it is claimed, these same vast funds cannot be made to pay for the damage which they have caused, solely because the Union has not chosen to incorporate.

There could be, it is submitted, no better illustration than that presented by this Record, of the wisdom of Congress in refusing to exempt labor organizations from the provisions of the Sherman Act, and in inserting the provisions in Section 8 making liable thereunder not only corporations organized under Federal or State laws, but also **associations authorized by or existing thereunder,** to the end that no person or group of persons who violated its provisions could claim immunity from liability thereunder.

The foregoing question has been determined in favor of the plaintiffs, without dissent, by the seven Federal Judges who have heard this case—Circuit Judges Sanborn, Carland, Adams, and Hook, and District Judges Youmans, Elliott and Trieber.

It is discussed more at length hereafter under our First, Second and Third Points.

Parties to the Record.

The plaintiffs in the Court below were the receivers of the Bache–Denman Coal Company and its eight subsidiaries, all closely interrelated both in corporate organization and in the physical location of their properties. These properties up to 1914 were operated as a unit, under one set of officers, in the Prairie Creek Valley in Sebastian County, Arkansas. In July, 1914, plaintiff's predecessor was appointed by the District Court for the Western District of Arkansas, receiver of all nine companies, by a single decree.

The defendants in the Court below were the United Mine Workers of America, its officers as such, District 21 of the United Mine Workers of America, its officers as such, 27 Local Branches in District 21, and 65 individuals, including both members of the Union and other persons, not members, who acted in conjunction with the Union in carrying out the conspiracy which resulted in the destruction of plaintiff's property.

It has never been attempted in these proceedings to secure a personal judgment against individual members of the Union not named as defendants.

Legal History of the Case.

The original complaint was filed in the District Court for the Western District of Arkansas, in September, 1914, about six weeks after the destruction of the properties. (Record page 5.)

To this complaint and to the amended complaint filed in July, 1915, defendants demurred on three grounds, first that the complaint did not set out facts which constituted a restraint of interstate commerce, second, for improper joinder of plaintiffs and causes of action, and third that defendants as unincorporated associations were not subject to suit.

Judge Youmans sustained the demurrer on the sole ground that the Court had no jurisdiction in that the acts complained of were not interference with interstate commerce or a violation of the Sherman Act (Record page 159), overruling the ground of demurrer based on the exemption by the Union from liability to suit.

A writ of error was then taken by the defendants to the Circuit Court of Appeals and the Unions also filed motions to dismiss on the ground that the writ should have been to this Court. The case was argued before Circuit Judges Sanborn, Carland and Adams, who sustained their jurisdiction and reversed the judgment of the Court below, deciding both that a violation of the Anti-Trust Act was presented, and that the Union was liable to suit under that Act.

Dowd *vs.* United Mine Workers, 235 Fed. 1.

Defendants thereupon applied for writs of *certiorari* and prohibition to this Court which were dismissed (242 U. S. 625. 653). (Record, page 179).

The Third Amended Complaint was filed February 27, 1917, and demurrers by all the defendants having been overruled, answers were filed denying all the material averments of the complaint. (Record pages 238–269).

On the issue thus formed the case was tried at Fort Smith in October and November, 1917, before his Honor Judge Elliott and a jury and resulted in a verdict of $200,000 which was trebled by the Court and to which

was added a counsel fee of $25,000 and interest to the amount of $120,400 (from July, 1914, to November 22, 1917).

On writ of error by defendants the case was heard before Judges Sanborn, Hook and Trieber, who reversed on the question of the addition of interest to the judgment but sustained the main judgment, Judge Hook dissenting, however, on an assignment relating to the charge of the trial Court.

From the judgment thus entered the present writ of error has been taken by the Union.

Analysis of the Complaint.

Record pp. 179–201, 224–228, 232–238.

The essential averments of the third amended complaint on which the case was tried are as follows:—

By a single degree a receiver was appointed of all the nine coal companies named in the caption, Finley and Hilliard having been later substituted in succession.

Of these nine companies, five were operating companies which for years had been engaged in mining coal in Sebastian County, Arkansas, and shipping it in interstate commerce, employing about 870 men and mining a product of an annual value in excess of $465,000, of which 75% was sold and shipped to customers outside the State of Arkansas in the ordinary course of interstate trade and commerce. Of the five operating companies, one was under contract to operate the properties of two of the others and the four non-operating companies were each financially interested in one or more of the operating companies either by lease, by contract, or by the ownership of all or a majority of their stock.

The mining of coal as conducted by these companies is not a manufacturing business but includes the placing of the coal on railroad cars for interstate shipment to the vendees thereof, the necessary employees of such companies including men who placed for loading, loaded and delivered to the common carriers cars of coal for inter-

state shipment, such interstate trade comprising about 75% of plaintiff's output and being, with the good will incident thereto, an essential feature of plaintiff's business, without which its properties could not have been profitably operated.

Defendant, United Mine Workers of America, is an unincorporated association of mine workers with a membership exceeding 400,000, subdivided into 30 districts and numerous locals, the Local Unions being a part of the respective District Branches in their several territories over which the latter have jurisdiction, and every member of the Local and District Branches being a member of the United Mine Workers of America and subject to its Constitution and By-laws as well as to that of his respective District and Local.

Each of the District Branches and Local Unions are AGENCIES **created by the United Mine Workers of America to carry out the purposes and objects of said national organization and more particularly to act with and for it in carrying out the general combination and conspiracy in restraint of interstate commerce hereafter set forth.**

Defendant District 21 is one of the District Branches of the National Organization, having jurisdiction over Arkansas, Oklahoma and Texas, and the various Local Unions named as defendants are affiliated with it and subject to its laws, the several Local Unions being themselves unincorporated associations having separate Presidents and Secretaries, but they and their members being all a part of the National Organization. By reason of the large number of such membership the complaint prays that the Unions named as defendants be brought into Court by service on the several officers. Certain of the defendants named, are officers respectively of the National Union and of District 21, and sufficiently represent these associations for service and trial in this action.

The United Mine Workers divides all coal mines into two classes, "Union," or "Organized" mines, operating under a contract with the Union to employ only Union

men, and "Open Shop" or non-union mines which refuse to make such a contract, although many of the latter (including plaintiffs, as averred in paragraph 23), do not discriminate against union men as employees. Owing to the unreasonable restrictions and regulations imposed by the Union on the organized mines, they are conducted wastefully and inefficiently and the cost of production of Union coal is thus unnecessarily enhanced to such an extent as to prevent its successfully competing in the market with non-union coal. The object of the conspiracy and combination of the United Mine Workers and those acting in conjunction with them was the protection of the Union mined coal by the prevention and restraint of all interstate trade and competition in the products of non-union mines. (Paragraphs 11 and 12. See also paragraphs 16, 18, 19 and 21.)

The complaint sets out certain particulars in connection with such restrictions imposed by the defendants, such having been introduced by the last amended complaint in answer to defendants' rule to make more definite and certain.

The complaint then enumerates the 23 States in which coal mining is conducted and alleges that the coal mined in each comes into competition in interstate commerce, directly or indirectly, with that mined in practically every other State, the coal mined in plaintiffs' Arkansas mines competing directly with that mined in Illinois, Kentucky, Alabama, New Mexico, Colorado, Kansas, Oklahoma, and Arkansas for the markets of Louisiana, Texas, Oklahoma, Nebraska, Kansas, Missouri, Iowa and Minnesota for trade in which, but for defendants' unlawful interference, plaintiffs would have engaged in 1914. The bituminous mines in the greater part of the above territory are union mines, the principal exceptions being Alabama, West Virginia, parts of Pennsylvania and Colorado, which the defendants had so far been unable to organize.

The United Mine Workers, the defendants, and many others to plaintiffs unknown, acting in conjunction with

defendants, are and for many years past have been engaged in an unlawful combination and conspiracy in unlawful restraint of interstate commerce in coal, and in an unlawful attempt to monopolize the same for union mines, the purpose, object and necessary effect of which, is, by hampering and increasing cost of production and shipment to non-union mines, by preventing them from obtaining employees and from shipping their product in interstate commerce, by suppressing and destroying their business, and by precluding any non-union mines from commencing operations, to secure for the defendants a complete monopoly and control of the labor in coal mines, to keep all non-union coal out of interstate commerce and competition and to monopolize the same for union coal, and to maintain the price in such markets for union coal by protecting it from the competition of non-union coal which, but for such combination, would be mined by the more efficient non-union mines, such protection being accorded in pursuance of understandings and agreements with the Union mine owners acting in conjunction with defendants in such conspiracy.

In furtherance of such combination and conspiracy the United Mine Workers, working through their district organizations, and defendants, have ordered and coerced strikes in non-union mines in different States, and by a variety of illegal methods, physical violence, intimidation, etc., have prevented the employment of men in such mines, have injured and destroyed their facilities for production and shipment, and have interfered with and attempted unduly to enhance the cost of producing and shipping their coal so as to make it impossible for them to sell it in interstate commerce in competition with that produced in union mines, all this having been done with the purpose and effect of preventing non-union operators from continuing in interstate commerce except on terms dictated by defendants.

In furtherance of such conspiracy the United Mine Workers and its District Branches since 1898 have

entered into negotiations, understandings and agreements with the operators of union mines in Ohio, Illinois, Indiana and other States by which it was understood that in consideration of the adoption of union conditions by the operators, the defendants would prevent the production and shipment of coal by the non-union mines in other states, in interstate competition with such union mines.

The last amended complaint, in pursuance of defendants motion to make more definite and certain, enumerated certain particulars in connection with such negotiations and understandings with the union operators (paragraph 21).

In pursuance of such combination and conspiracy, the United Mine Workers and those acting in conjunction with them, at various times since 1898, entered on a general campaign and crusade to suppress interstate trade in non-union coal, and to destroy the business of non-union operators, conducting strikes by illegal methods in Pennsylvania in 1911, in Colorado in 1913 and 1914, and in West Virginia at various times since 1906.

Early in 1914 all the plaintiff companies decided that the operating companies would go on a non-union or open shop basis, without discrimination against any employee because of his union affiliations, and about the middle of March two of them (the Prairie Creek Coal Mining Company and the Mammoth Vein Coal Company, whose properties were to be operated under contract by the Mammoth Vein Coal *Mining* Company) closed down and discontinued as union mines preparatory to reopening open shop in April; another (Hartford Coal Company) had not been in operation for a year but planned to start open shop as soon as expedient, at least in the summer of 1914, and the fifth, Coronado Coal Company, continued operating with the union until April 18, 1914, when its employees struck because of its unity of interest with the other non-union operations of these plaintiffs. Each of these companies had made preparations, warranted by existing business conditions,

to do a profitable interstate business during 1914, which defendants well knew and aimed to prevent.

In April, 1914, certain of the operating companies started open shop, employing men to mine, load and ship coal in interstate commerce, but defendants and those acting in conjunction with them, in furtherance of their conspiracy to drive non-union coal out of interstate commerce, and of their understanding with the union operators to protect them from non-union competition, by illegal means, drove and frightened away plaintiff's employees, including those directly engaged in shipping coal to other states, prevented plaintiffs from employing any other men, destroyed the structures and facilities for mining, loading and shipping coal, and the cars of interstate carriers waiting to be loaded and those already loaded with coal in and for interstate shipment, and prevented plaintiffs from engaging in or continuing to engage in interstate commerce, intending thereby and for the sole purpose and object and with the effect of destroying plaintiff's interstate business and preventing plaintiff's coal from coming into competition with union mined coal in interstate commerce.

In pursuance of defendants' motion to make the complaint more definite and certain, and under order of the District Court prior to trial, the last amended complaint specified the names of certain of the defendants and the persons acting in conjunction with them who participated in some of the overt acts above mentioned, the dates of certain of such acts, and the names of certain of plaintiffs' employees who were driven away by defendants, the complaint alleging that other similar acts were committed by defendants and other persons in pursuance of such conspiracy on other dates "between April 1st, 1914, and July 20th, 1914, and subsequent to July 20th, 1914, down to the filing of this suit *and subsequent thereto*, by which there was created a continuous atmosphere of terrorization which effectually prevented any person from entering or continuing in the employ of said companies through fear of harm or violence to their persons or property from defendants."

Except for such combination and conspiracy of defendants and the acts done in furtherance thereof, plaintiffs would have done a large and profitable business, but by reason thereof their business and property was damaged and injured to the amount of $740,689.42, for treble the amount of which this suit was brought.

Certain of the funds of the United Mine Workers in Arkansas were attached and judgment prayed for $2,222,068.26 with costs and reasonable attorney's fees.

Such is a brief summary of the complaint, sustained by the Circuit Court of Appeals as stating a valid cause of action.

The Answers.

The answers by defendants denied practically all the averments of the complaint and alleged that they were unincorporated associations, having a membership of more than 400,000 members engaged in coal mining in the United States, Mexico and Canada. (Rec. 247, 261.)

Certain Undisputed Facts.

It is not apparently disputed by the other side that the record contains competent evidence of many of the facts alleged in the complaint.

The appointment by a single decree of the one receiver for the nine companies was not denied in the defendants' answer, and was shown by the record of the Court in which the trial was held.

The participation by plaintiffs prior to 1914 in interstate commerce in coal, their shipment of coal to other States, the building up by them with an investment of over half a million dollars of a valuable trade and good will for their product in other States, and the fact that more than 75% of their annual shipments of coal of a value of $465,000 were sold to customers and were shipped direct to markets outside of Arkansas, which interstate business was absolutely essential to their operation, was proved without attempted contradiction.

Bache (688, 670, 672); Puterbaugh (2060); Castle (1827); Thrasher (1841).

Although the unity of interest between the various plaintiff companies was denied in defendants' answer, it was fully shown by the evidence, and indeed, defendants' counsel during the entire course of the trial made much of the fact that all the companies were under one management, contending that Bache and Denman, the stockholders in the parent company, were the real parties in interest.

It was not seriously disputed at the trial and is not apparently now disputed that in April and July, 1914, the plaintiffs' business and properties were destroyed by fire and dynamite and their employees driven off and some of them murdered by a mob composed for the most part of members of the United Mine Workers of America and that, as a consequence of the insolvency resulting, the Companies' leases were forfeited.

Nor, indeed, was it seriously disputed at the trial that the damages resulting directly to plaintiffs were far in excess of the $200,000 verdict awarded by the jury. Two weeks after the destruction of the property, the United Mine Workers' Journal estimated the damage at $200,000 (2398), and later on in the fall again gave it as $500,000 (2403).

Defense.

The defense by the United Mine Workers at the trial rested solely on the contentions:—

1. That the destruction of plaintiffs' business and property, by whomever it was caused, was brought about not for the purpose of benefiting the Union or of preventing or restraining interstate commerce or competition in non-union coal, but solely as the result of a purely local outburst against plaintiffs' employees, resulting from alleged illegal acts on their part in insulting little girls, making alleged illegal arrests, and generally terrorizingthe community.

2. That the National Association, the United Mine Workers of America, was not so organized and conducted as to make its associate funds responsible for acts of the officers or members of its District or Local Branches, in which the officers of the National Organization had had no direct participation, and which had not been specifically authorized, directed or approved by it. Even though plaintiffs' property and business were shown to have been destroyed in the course of and as the result and object of the Prairie Creek Strike, this was a purely local affair, concerning only the Organization known as District 21, with which the National Organization had nothing to do, and in which neither it nor any of its officials in any way participated and which neither it nor they had officially approved.

It was on the two foregoing propositions that the case in the Court below turned.

Before taking up in detail the proof of intent on the part of the Union, we deem it advisable to examine the Constitution and structure of the United Mine Workers' organization.

While logically the following analysis might have been inserted hereafter, in connection with the discussion of our Fourth Point, dealing with the liability of the National Union for the acts of its District and Local Branches, as a practical matter it is deemed necessary, in order to appreciate the significance of the facts of this case, to have a preliminary understanding of the organization of the defendant Association.

Organization of the United Mine Workers.

The United Mine Workers, although unincorporated, is effectively organized as a business institution.

While the Association, as such, does not make profits or distribute dividends, and while the members do not work for it but it for them, the same was true of the Transmissouri Freight Association and the Joint Traffic

Association. The members have joined forces, created an organization and contributed a common fund to promote their pecuniary and business interests.

The United Mine Workers is run along the line of a modern business institution. It borrows large sums from banks to carry on its activities. (Green, page 2507).

The most important feature of its organization, for purposes of the question here involved, is the absolute centralization of ultimate power in the National Organization and the division of the National Association into branches and sub-branches which are constituted and act as the agencies of the Main Association in carrying out its objects.

The complaint avers in paragraph 7 that the District and Local Branches are "agencies" created out of itself by the National Union to carry out its purposes, and that in carrying out the present conspiracy District 21 and the Locals acted "for and with" the National Union.

The Main Union of the United Mine Workers was not formed, as was the Confederation of States in 1783, by the getting together of a number of Local or District Associations and the delegation by them to a confederated association of limited powers, reserving the balance to the constituent branches.

The United Mine Workers was formed, not from the bottom up, but from the top down.

The Local and District Branches did not create the National Association. They were created by it.

The individual miners got together and formed the National Association, which delegated to an Executive Board, representing the whole association, power to create subdivisions of the whole, to admit new members, and to form them into new subdivisions.

The theory and basis of the organization is clearly explained in an authoritative editorial in the United Mine Workers Journal found on pages 518–520 of the Record:—

"* * * The International Organization is divided into Districts, Sub-districts and Local Unions, all receiving their existence and authority from the International headquarters and all subordinate to International authority. **This was done in order that there might be no conflict of authority in the adjustment of the various questions affecting the rights of the membership.** * * *

"The International Organization exercises its authority over the Districts, Sub-districts and Local Unions, and this authority is delegated to the International Union, not by the District or the Subdistrict, but by the representatives direct from the Local Union. **The authority of the International Union is derived direct from the membership** and the authority is delegated to the International Organization to divide the various mining communities of the country into districts and sub-districts."

This basis of organization is clearly carried out by the constitution of the National Organization which is found on pages 419–451 of the Record.

The first two sections of Article III provide as follows (420):—

"ARTICLE III.

JURISDICTION.

"SEC. 1.—The International Union shall be composed of workmen eligible for membership in the United Mine Workers of America, and may be divided into Districts, Sub-Districts and Local Unions.

"SEC. 2.—**All Districts, Sub-Districts and Local Unions must be chartered by and shall be under the jurisdiction and subject to the laws and rulings of the International Union.**"

By Article IV it is provided that Districts **may be** formed with such number and territory as may be

designated by the International Officers and may adopt such laws for their government as do not conflict with the laws of rulings of the International Union. Districts are permitted to sub-divide themselves subject to change by the International Executive Board.

The supreme power in the Association is vested in the National Conventions, which meet biennially or on special call by the Executive Board or by five or more districts, and are composed of delegates from the various local unions, the voting power of the delegates being regulated in accordance with the membership of the locals represented by them.

Only a convention can alter the International Constitution (Art. XX, Sec. 9) although the International President is given power to interpret it (Art. IX, Sec. 7).

By Article XI, Sec. 24, it is provided, that between Conventions, full power to direct the workings of the Organization, shall rest in the International Executive Board, which consists of the International President, Vice-President and Secretary-Treasurer, *ex officio*, and one delegate from each District.

The entire membership is divided geographically into Districts, 26 of which were represented by active organization in 1914. The larger of these are sub-divided into Sub-Districts. Although theoretically the Local Unions may be considered sub-divisions of the Districts or Sub-Districts, actually the existence of the Local Unions in a District always precedes the creation of the District by the National Executive Board. The Locals are formed by the National Organizers, appointed by the President, being numbered consecutively in the order of their formation throughout the whole country. When sufficient Locals are organized in a given region a District organization is created by the International Executive Board, and the District Officers are given authority to administer it.

While the Districts, Sub-Districts and Locals have their own officers, elected by them, and their own treasuries, they are not, as the witnesses and counsel for defendants would have had it appear, autonomous, nor

may they use their funds except within the limited sphere for which by the International Constitution they were authorized to acquire them,—the furtherance of the aims objects and purposes of the Organization by which they were created and of which they are a part.

By Sections 25 and 26 of Article XIV it is provided (440):—

> "SEC. 25.—No Local Union shall be allowed, for any reason or purpose, to divide its funds among its members, nor make donations to strikes unless said strikes have been endorsed by the American Federation of Labor or an affiliated organization. Any Local using its funds for other than legitimate purposes, shall be fined double the amount so used, the fine to be collected by the District and turned over to the International Secretary-Treasurer.
>
> "SEC. 26. Should any Local Union for any cause disband, the charter and all the moneys and supplies belonging thereto must be sent to the International Secretary-Treasurer by the Local Officers thereof."

The same rule and practice applies to District Branches (see *infra*, pages 21–23).

Since (as we shall presently show) the Executive Board has power at any time to disband a District and to assume direct charge of the affairs of the Organization in its jurisdiction, and since the President may at any time revoke the membership of any member or the charter of any Local, the International Officers obviously have the membership, the funds and the property of the Districts and Locals under their absolute control. So-called loans by Districts to the National are merely book-keeping entries, like the inter-departmental or branch accounts of a large corporation. In fact, that is what the Districts and Locals really are. They are Branch Offices of the Company.

Even in the constitution of their own membership the Locals are not autonomous. They are compelled to

recognize the transfer card of a member coming from another Local and compelled to admit any qualified miner to membership (Article XV, Sections 9 and 17) on pain of paying him for his time and expenses (Article VI, Section 5).

Members who consider themselves unjustly treated at the hands of the Local or District officers may appeal from the Local to the Sub-District, the District, the International Executive Board and finally to an International Convention (Article III, Section 3; Article VI, Sections 2–5).

The funds of the International Organization are obtained by a *per capita* tax of twenty-five cents per member per month, collected by the Locals and by them turned over to the National Secretary-Treasurer (Article XIV, Section 13). (This amount has, we understand, been largely increased since 1914).

The Executive Board is also authorized to levy special *per capita* assessments (Article IX, Section 25. See also Rec., page 1845).

The Board is the ultimate custodian of the funds of the Union (Article IX, Section 26).

Article VII of the Constitution provides that the International Officers shall consist of a President, Vice-President, Secretary-Treasurer, three Auditors, three Tellers, the delegates to the American Federation of Labor, and the International Executive Board members, all but the latter being elected by referendum vote of the entire membership. The Board members are elected by the membership within their respective Districts, but when so elected become officers of the whole association.

In reading the Constitution, it is important to bear in mind that the Board members and the Executive Board itself are specifically designated as "officers," to whom therefore apply the other provisions of the constitution relative to officers. The familiar corporate distinction between Directors and Officers does not apply here.

While the Executive Board is nominally over the President and while by the Constitution it is his duty to

carry out their instructions (Article IX, Section 12), he is really omnipotent so long as he gives no ground to a convention to impeach or recall him for malfeasance (Article XI, Section 29), since when the Executive Board is not in session, the individual members are subject to his direction (Article IX, Section 31 also Rec. 372), and since he has power by Article IX, Section 3, to suspend or remove any international officer or appointed employee for insubordination.*

Since by Article IX, Section 7, it is made part of the President's duty to "interpret the meaning of the International Constitution" subject only to repeal by the Executive Board, which he can obviously control, he is for all practical purposes, a Czar of Czars.

Article XIX entitled "Official Journal" constitutes the United Mine Workers Journal the "official organ of the Organization." It is published by the International Executive Board, the editor being appointed by the President (Rec. 505).

The control by the National Association over the District and Local organizations is thoroughly effective

The President may suspend or expel a member and he or the Executive Board may forfeit the charter of a Local Union which is not in its or their opinion, carrying on the work of the Organization in a proper manner. **This has actually been done in practice, the Record showing, that in July, 1911, charters of 28 Locals were forfeited** (Rec. 3170).

So, too, the Executive Board may suspend or disband any District Branch, take possession of its funds and administer its affairs, and this also has been done in practice.

In case of an Association of this type what the parties

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*The contention that Article IX, Section 3, does not apply to Board Members is effectively answered by a comparison of it with the preceding section, Article IX, Section 2. "He shall fill by appointment all vacancies occurring in any International office, except *International Board Members*, who shall be elected by the District in which the vacancy occurs."

"Art. IX. Sec. 3. He may suspend or remove any International Officer or appointed employee for insubordination *or* for just and sufficient cause."

have actually done and what powers they have actually assumed and exercised in the management of the Organization are even more important than what their Constitution says.

The practice with regard to the suspension and abrogation of District and Local Branches by the National Officers was summarized by the witness Green, the Secretary-Treasurer of the National Union (Rec. 366):—

"Q. Mr. Green, have any district organizations been organized and then disbanded, that you know of?

"A. Yes.

"Q. Which ones?

"A. District No. 16.

"Q. Where was that?

"A. That comprises the Georgia District and the Maryland District.

"Q. Fifteen is not here any more. Has that been disbanded—Colorado?

"A. Fifteen—the charter of District 15 has been suspended.

"Q. And 26 and 28, have their charters been suspended?

"A. They are abandoned.

"Q. And 29—that was another one in West Virginia, was it not?

"A. The charter there was suspended, but it has been re-established recently.

"Q. Were there ever any Districts 3 and 4?

"A. Not that I can recall. I cannot recall that Districts 3 and 4 were ever in existence.

"Q. District No. 19 was disbanded, too, was it not—Tennessee?

"A. Suspended. The charter was suspended.

"Q. When these districts were suspended, what was the practice? How was that done?

"A. The international organization took charge of the territory embraced within the district covered by the charter rights of the district.

"Q. How did they do that?

"A. The affairs of the district were administered by the International Union instead of by a full and complete set of district officers.

"Q. What became of the district officers?

"A. They were discontinued.

"Q. And if they had any funds they came back to the International Union, did they?

"A. Oh, yes; they reverted to the International Union.

"Q. By what kind of a resolution or action was that done? By a resolution of the International?

"A. The resolution of the Executive Board.

"Q. They would pass a resolution that the district was suspended or abandoned and then notify the district officers, would they? Where a district was suspended they would pass a resolution that the district was suspended and notify the district officers to that effect?

"A. Yes, sir.

"Q. Then would the district officers go out of office when a district was suspended?

"A. Automatically.

"Q. What would be the difference between the suspension of a district and the abandonment of it?

"A. Well, the difference is this: That a suspension of a district merely means that the district autonomy has been suspended, and that the International Union itself directly administers the affairs of the district. The work within that district goes along under the authority and control and direction of the International Union instead of under the control of district officers. Usually the suspension is temporary and later on the charter and the district and all its rights are restored. When a district is abandoned the charter and supplies for the district are withdrawn, and all activity.

"Q. Then it is just as if it never had existed?

"A. Just as if it never had existed.

"Q. And the same procedure was gone through in

case of the suspension and abandonment of a local, was it?

"A. I think there is a little difference.

"Q. How would the suspension or abandonment of a local union be brought about?

"A. **The International president has authority under our law to revoke the charter of a local union.**

"Q. How would he do that?

"A. Notify the local union that the charter of the local was revoked.

"Q. And then its funds would revert to the International Union and not to the district?

"A. **The funds of the local union would revert to the International Union, and they would not exist as a local union any longer.**

"Q. In order for them to exist, they would have to be re-chartered and the charter signed by the president?

"A. A new charter issued, and the local union re-chartered.

"Q. I understand that where the district branch was abandoned, that would be by a resolution of the International Executive Board of the same general nature as suspension, except that it would go further in its action and in its effect?

"A. Yes; the International Executive Board would take that action and the district would be abandoned.

"Q. And the funds would come back, if they had any, to the main union?

"A. Yes, sir; **the property and funds belonging to a district reverts to the International.**

"Q. **Then the president has not any authority to suspend or revoke the charter of a district branch?**

"A. **The International Executive Board has that authority."**

Members, Locals, Sub-Districts and Districts are but part of the National Organization, chartered by it, under

its jurisdiction and subject to its laws and rulings, subject even to having their existence terminated by the power which had created them.

That the officers of the various District Organizations were, as such, officers of the International Union and were so regarded by those in authority is clearly shown by the testimony of John P. White.

When his deposition was taken at Indianapolis in August, 1917, he was still President of the National Organization and as such had power to interpret the National Constitution (see Article IX, Section 7, Rec., 423).

At the outset of his testimony, after stating that he was then President of the United Mine Workers of America, he was asked what position he occupied prior to that. He replied:—

"President of the Iowa Miners."

The questioner having in mind his prior connection with the International Organization as distinguished from the District (he was Vice-President 1908–1909), again put the question (479):—

"Q. You did not occupy any position before that (April, 1911) in the United Mine Workers, for the year before that—from 1910 to 1911?

"A. Yes, sir.

"Q. What position?

"A. President of the Iowa Miners.

"Q. You were Vice-President of the United Mine Workers of America to April 1, 1910, were you not?

"A. I was immediately—up to the year 1910 I was president of the Iowa Mine Workers, the Iowa branch organization.

"Q. During what period were you the Vice-President of the United Mine Workers?

"A. 1908–1909.

"Q. And did you occupy any position prior to that?

"A. Yes, sir.

"Q. What position?

"A. President of the Iowa Miners.

"Q. For how long?

"A. I was president and secretary-treasurer for about twelve years.

"Q. So you have occupied an office in the United Mine Workers since 1896?

"A. Yes, sir; I have been there since about twenty years."

Again in White's examination at the trial, in answer to his own counsel, he said (1626):—

"Q. Have you had any connection with the defendants, United Mine Workers of America, officially or otherwise, and if so, state what?

"A. I have been an officer of the United Mine Workers of America up until a few days ago, for twenty consecutive years."

The unity of the National Organization and its several branches is further strikingly emphasized in an extract from the Annual Report of the Treasurer of the International Organization for the year 1906—before the Union attained its present size and strength (509):—

"The amount we have in our national treasury does not by any means show the full financial strength of **our organization** or its defensive power.

"There is in the National Treasury..	$389,546.40
"Reports from twenty of our twenty-three Districts show in the districts treasuries.....	1,536,078.03
"Reports from twenty-one of our thirty-one sub-districts show in their treasuries.....	115,449.99
"Making a total in the treasuries of the various branches of our organization of.....	$2,679,134.43

"These figures would undoubtedly be materially increased if we had complete returns from the Districts, Sub-districts and Local Unions."

Article XVI of the Constitution of the International Organization is devoted to the subject of "Strikes," which are one of the means specified in Article II, Section 2 (419) by which the organization proposes to attain the objects for which it was formed.

A careful analysis of the first three Sections of this Article is very important to the present question. They are as follows (446):—

"ARTICLE XVI.

Strikes.

"SEC. 1. No District shall be permitted to engage in a strike involving all or a major portion of its members, without the sanction of an International Convention or the International Executive Board.

"SEC. 2. **Districts may order Local strikes within their respective Districts on their own responsibility** but where local strikes are to be financed by the International Union they must be sanctioned by the International Executive Board.

"SEC. 3. Strikes shall not be called in any unorganized field without the sanction of an International Convention or the International Executive Board, and no financial aid shall be furnished by the International Union for the support of any strike until after the strike has been in effect four weeks, unless otherwise decided by the International Executive Board."

These provisions recognize four different classes of strikes, the conduct of which is prescribed by the Constitution.

1. Strikes involving all or the major portion of the members of the District.

Such a strike may not be called or conducted by the

District Organization without the prior sanction of the International Executive Board.

2. Local strikes financed by the International Organization.

Here too the prior expressed sanction of the Executive Board is necessary.

3. Strikes in an unorganized field.

Again the International sanction is a pre-requisite.

4. Local strikes, in unorganized fields, which are not to be financed by the National Organization.

In this instance only is the District given power **by the Constitution** to order the strike without consulting the International Officers.

This does not mean, however, as plaintiffs in error would have it appear, that in **conducting** such a local strike the District does not act as the representative of the International Organization. (Brief of plaintiffs in error pp. 98, 99.)

Quite the contrary.

Whereas in the first three classes of strikes the District must in each instance secure express sanction and authority from its superior, before calling the strike, in the last instance it is given blanket power, **by the Constitution,** to **order** local strikes without bothering the International Officers with the details.

It is as if the Directors of a corporation instructed a branch office that in case of large purchases it must secure the approval of the Home Office, but that in purchases of less than $10,000, it might act on its own responsibility. Obviously this would not mean that for the smaller purchases the Branch office alone would be liable. Such a provision would be invalid to exempt the corporation even if it were so intended.

The intention is clearly an extension of power in the agent rather than an attempted limitation of the liability of the principal.

The word "responsibility" is used in the sense of "initiative" rather than in that of "liability."

The Local and District Organizations derive their entire power, authority and existence from the International, which delegates to them the authority to carry out its objects in certain particulars in connection with strikes.

In a major strike or in one in an unorganized field, or in a strike where financial aid is required directly from the treasury of the International Union, the District may not order the strike without the express sanction in each particular instance of the International Officers.

In the sole case of a local strike in an organized field which is to be financed by the Districts without National assistance it is given blanket authority.

In such a case it acts, however, solely by virtue of the authority thus given it,—acts as the authorized agency of the International Association, which created it, of which it is an integral part, and of which it is the authorized representative.

The whole argument of plaintiffs in error in connection with the liability of the National Organization for the Acts of the Local and District Branches is founded on the assumption that by the Constitution the National Association has specifically disclaimed responsibility for the manner in which Local strikes are *conducted*.

After quoting correctly the provision giving the Districts power to *order* local strikes on their own responsibility, plaintiffs in error proceed to discuss it as if it provided that in conducting such a strike the District should alone be *liable*.

Obviously the provision was intended to have no such effect, its effect being to extend the power of its Branch or Agent to the ordering of local strikes without getting the express sanction of the Home Office, which is required only where financial aid is to be sought from the National Treasury proper.

Another important consideration must also be borne in mind in considering the foregoing provisions of the Constitution.

There is not evidenced the slightest intention even in the case of Local Strikes, of a relinquishment by the International Organization of ultimate power and control over the District and Locals in the conduct of such strikes.

It is merely provided that the Districts **"may"** order local strikes on their own responsibility—without in each instance securing the sanction of the International Executive Board. The latter Board or the National President can obviously, however, control even a Local Strike throughout its course, since all that it is necessary for him to do, in case the District is not conducting the strike in a manner to do credit to the organization, is to threaten the District with suspension or extermination and the forfeiture of all its funds unless it behaves.

That the Prairie Creek Strike was a Local Strike within the meaning of Article XVI, Section 2 of the Constitution, which District 21 had power to conduct without further action by the International Officers, was admitted by the miners' President, John P. White (page 1637).

It did not involve a major portion of the members, was not in an unorganized field, and no International funds were asked by the District in conducting it. Indeed at the time, the National Association had on its hands more than it could finance,—the West Virginia two-year strike just ended and that in Colorado at its height.

If John P. White had not really approved **of what he knew** District 21 had done up to May 18, when he attended the Convention at Fort Smith, he could by a word have stopped short all intimidation and all violence and have prevented any further injury to the plaintiffs' property.

If he had not approved of the destruction of the property on July 17, he could have at once have forfeited the charters of all the ring-leading locals, expelled the offending members from the organization, and had the Executive Board assume the functions and duties of District 21 (See *supra*, pp. 21–23).

If he had done this and had acted in good faith there

there would have been no need whatever of four Troops of United States Cavalry in the Hartford Valley in November.

Instead, however, he merely incited the members to further excesses by a fire-eating speech praising their fighting spirit and damning the employer class for protecting their property. (See *infra*, pages 131–134 hereof.)

In so doing he fixed the liability of the National Organization not only as that of a Principal ratifying the act of its duly Authorized Agent, but as a direct participant, conspirator and accessory both before and after the fact.

Our case against the National Association does not rest solely on the acts of the District and Locals as authorized agents, or on the ratification of such acts by the National Officers, the Journal and the Conventions.

The evidence showed beyond a shadow of a doubt that the National Officers and Executive Board knew of, approved **and incited** the outrages at Prairie Creek **while they were going on.**

The ultimate control of the National Organization over the District, even in the case of strikes conducted by the District, is clearly recognized by the District Constitution. By Section 2 of Article XII, entitled "Strikes" it is provided that "before final action is taken by the District upon questions that * * * may require a strike to determine, the President and Secretary of the aggrieved District shall jointly prepare, sign and forward to the National President a statement setting forth the grievance complained of, the action contemplated by the District together with the reasons therefor, **and await the decision of the National President and be governed thereby."** (Rec., 2849.)

While there is no direct and specific evidence in this Record as to whether in the case of the Prairie Creek Strike, Stewart and Holt, the District President and Secretary-Treasurer, complied with this provision of their constitution, the presumption would seem to be, in the absence of any evidence whatever on the subject, that they did.

What does appear is that on April 6th, when the trouble started, President Stewart, of District 21 and International Board Member Mullen of District 21 were at Kansas City where President White of the International Union also was; that on April 8th Stewart and Mullen came to Fort Smith, stayed two days, and then went back to Kansas City, all on union business, their expenses being paid, Stewart's by District 21 and Mullen's out of the International Treasury; and that the next week the men were called out at Coronado and a notice of the strike was inserted in the United Mine Workers Journal.

White certainly learned the facts from some source prior to his report of the April 6th Riot to the Executive Board on May 4th (see *infra*, p. 127–128 hereof).

Again they all had a good chance for a full discussion during the week's convention at Fort Smith from May 18-23, which President White attended.

It would not, however, seem to be material whether White expressly sanctioned the Prairie Creek Strike or merely acquiesced in and ratified what he knew the authorized agency of the National Union was doing and had done in connection with it, on its behalf, and in the furtherance of its purposes and objects.

In either case the Association is clearly liable.

We have thus an Organization absolutely centralized in ultimate authority, but to the subordinate branches, to which have been delegated power to act for the Association in carrying out its objects.

The general theory of the organization and of the grant of power to the Districts with regard to the ordering of strikes was, that the national officers should directly handle the larger conflicts and the organization of the unconquered territory, but once a field was organized, it was turned over to the District, as a sort of prize-crew, to hold and administer for the Association, the National Organization reserving, however, supreme authority at any time to assume active charge.

PROOF OF INTENT AND OF UNION PARTICIPATION AND RATIFICATION.

The principal question submitted by the Trial Court to the jury was the intent and purpose which actuated those who destroyed plaintiffs' business and property.

Of what, then, consisted the proof on the part of the plaintiffs that their business and property was destroyed for the purpose of benefiting the United Mine Workers by preventing and restraining interstate commerce or competition in non-union coal?

This proof and the resultant liability of the union may be sub-divided under five heads:—

1. The impregnation of the entire organization of United Mine Workers, officers and members, in their negotiations with Union operators for many years prior to 1914, with the motive for the suppression of the business of non-union mines,—the prevention of their competing in interstate commerce with unionized operations.

2. The acts and declarations of the officers and members of the Union and their sympathizers participating in the destructions of plaintiffs business and property, and the use of the Union funds therefor.

3. The statements in defendents' official publications during the course of such acts and the official acts by defendants in acknowledgement that the destruction of plaintiffs' business and property was being effected by Union officials, members and sympathizers for the purpose of benefiting the Union.

4. The acceptance by the Union of the benefits to it of the destruction of plaintiffs' business.

5. The failure by defendants openly to repudiate or discipline its officials and members known by it to have participated in the illegal acts causing the destruction of plaintiffs' business and property.

1. Formation and Development of the Motive for Suppressing Non-Union Operations.

As heretofore noted, the complaint alleges that defendants destroyed plaintiffs' business and property with the intent and for the purpose of preventing plaintiffs from shipping coal in interstate commerce, for the protection of the coal produced by Union operators in interstate markets against the competition of plaintiffs' cheaper mined non-union coal, and in pursuance of "negotiations, understandings and agreements" between defendant and certain Union operators that in consideration of the recognition by such operators of the Union and their granting the eight-hour day and other favorable Union conditions, the Union would, by all means in its power, afford them such protection.

None of the Union operators were made parties defendant to the suit, nor is it alleged that any of them participated directly in any of the acts which resulted in the destruction of plaintiffs' business and property.

None of such operators were mentioned at all by name in the original complaint, the only reason for certain of them being specified in paragraph 21 of the last amended complaint being the order of the District Court requiring their specification on petition by defendants to make the complaint more definite and certain in this regard.

Although they were in a sense parties to the general conspiracy against all non-union operators, in that, for their own ends and with knowledge of the probable consequences of their acts and urgings, they furnished the stimulus and motive to defendants to prevent plaintiff from starting its mines non-union, it is not alleged that any such union operators were such direct participants in or accessories to the immediate cause of plaintiffs' injury as to make them personally liable therefor.

Plaintiffs, it is true, during the trial, offered to prove, from the United Mine Workers' Journal, the official organ of the Union, the wholly illegal methods and activities sanctioned and approved by the Union in the course of previous strikes conducted by it, which if known to the

Union operators (as it must have been), might well have charged them with knowledge of the necessary results which would follow from stimulating the mine workers to attack other non-union operations (621–629, 630–644). See also as to the Irwin strike in Pennsylvania (Hayes, 1060, 1061), as to West Virginia (Green, 589; McDonald, 1118; Hayes, 1131; White, 1135–1140; Hayes, 1145, 1146), and as to Colorado (568, Mitchell 1047; White, 1136–1140).

Such evidence was, however, excluded by the trial Judge. As the case turned out this ruling was harmless to plaintiff, since no verdict was sought against any operator and the evidence as to defendants' motive and intent, in connection with the negotiations with the union operators, was ample to establish the same, even though it did not directly connect the operators as participants in an illegal conspiracy.

With the knowledge of Union methods possessed by such Union operators, as shown by the record, their persistent urging the miners to use all methods in their power to keep non-union coal off the market might well, in itself, have been sufficient to charge them with what they must have known would be the probable consequences thereof. We need not, however, discuss the academic question as to whether, if the operators had been sued, they could have successfully maintained that they contemplated that the Union would use only legal methods.

The methods used by the miners in carrying our this arrangement were illegal in the extreme,—intimidation, assault, dynamite, arson, murder.

See, in this connection Jayne *v.* Loder, 149 Fed. 21 (4th paragraph of Syllabus).

The negotiations with the Union Operators were relevant and material to plaintiff's case to show that defendants' subsequent crusade and campaign against plaintiff was undertaken and carried out in pursuance of such understanding, under stimulus of the lessons taught thereby, in order to benefit and further the

purpose of the Union and secure the results to be attained thereby, and in order to show that the destruction of plaintiff's business and property did not result, as defendants contended, from purely local causes—was not a spontaneous outburst by an inflamed populace against plaintiff's employees by reason of their alleged obnoxious practices.

Defendants' counsel, throughout the trial, endeavored to confuse the issue by giving entirely undue prominence to the part played by the Union Operators in this case. Operator after operator was called to the stand by defendants and asked if at any of the meetings between miners and operators which he had attended there was ever any agreement or understanding, written or oral, to destroy plaintiff's mines by bloodshed, arson and murder. Of course they all answered no.

Defendants' counsel, purposely or inadvertently, totally misunderstood or misconstrued the function of the Union Operators in connection with these proceedings, **which consisted solely in furnishing the motive to the miners to benefit their organization by protecting the Union Operators from non-union competition,** the methods to be used being left to the miners, but the operators probably having a pretty fair idea, from past experience, as to what methods would be used.

If the issue were whether a horse which the defendant was found riding toward A's house had been stolen by defendant from B, or had been taken by mistake for another horse to which defendant had a proper claim, it would be proper to show, in proof of defendant's intent, that on the previous day A had told defendant that if he could get this particular horse of B's, A believed he would give him $500 for it. It would be entirely immaterial that in making such statement A had contemplated the employment by defendant only of legal means to acquire the horse, and thus could not be convicted as accessory to the theft. It would also be immaterial that the conversation resulted in no binding contract between defendant and A.

Such was the purpose and effect of the introduction of extracts from the debates during the negotiations between defendants' representatives and the Union Operators in the Central Competitive Field between the recognition of the Union in that field in 1898 and the destruction of plaintiff's mines.

Whether the upshot of such negotiations was shown by oral testimony, or by the record of the proceedings as verified by defendants' own witnesses, including its Secretary-Treasurer, the purpose and relevancy of the evidence was the same,—to show the necessary intent and motive for defendants' acts in destroying plaintiff's business and property, and to give the jury a proper basis for its finding that such acts were done for the purpose of benefiting defendants' organization,—to restrain interstate competition and commerce,—and not for the purpose alleged by defendants.

The development of such motive and intent was shown by the evidence, *first*, in the proof of the negotiations between the miners and operators as related by the oral testimony of several of the participants and as found in the record of such proceedings, and *second*, by the extracts from the proceedings in the conventions attended by the miners alone, and by their Official Journal, showing the effect on the miners of the operators' importunities.

The Joint Conference Proceedings.

Prior to 1898 there was no effective organization among the miners to maintain wages, hours of labor and working conditions, and no organization of operators to maintain prices, to eliminate ruinous competition and to distribute the coal in its "natural channels."

Conditions at this period were described by defendants' witness Taylor.

In 1897 the operators had been through a long and costly strike and were on the verge of bankruptcy through the ruinous competition among themselves. The miners also were on the verge of starvation, due not only to

the recent strikes but also to the low wages they had received when at work. It was a "free for all" condition in which "might made right,"—unrestrained competition (2772).

In the fall of 1897 a conference was called at Columbus, Ohio, between the operators of Ohio, Indiana, Western Pennsylvania and Illinois (the district known as the Central Competitive Field) and the representatives of the miners in this District (2772).

> "We agreed, beginning with that time, to turn over a new leaf, and call a conference, and discuss our matters jointly, and **allow all the operators to have a voice in what his competition would be,** and allow all the miners to have a voice in what they would get, and the work would go into its natural channel, **and the men get the work that belonged to their district, and the operators sell the coal that belonged to their district.** It was with that theory in mind that that conference was called which is now known as the Interstate Agreement, by which the miners, the employer and the employee would counsel together and arrange basic rates (Taylor, 2772–2773).

As a result of the first Columbus conference, another larger conference was called which met at Chicago in January, 1898, and after a discussion of the "competitive conditions" (2772) the so-called Chicago agreement of January 28, 1898, was signed on behalf of the operators of the four States comprising the Central Competitive Field, by the representatives of the miners in each of those States, and by the President, Vice-President and Secretary-Treasurer of the United Mine Workers of America (390).

The first seven Articles of this agreement merely fixed the basic mining wages in the several districts and their relation to each other. Article 5 provided for the eight-hour day.

Article 8 is the provision of the written agreement which is important in the present connection and which

gave rise to the greatest discussion and controversy between the parties in later years. It provided as follows:—

> "8. That the United Mine Workers Organization, a party to this contract, do hereby further agree to afford all possible protection to the trade and to other parties hereto against any unfair competition resulting from a failure to maintain scale rates." (392.)

The meaning and purpose of this clause, and particularly that of the words "unfair competition," **as referring to the competition of coal mined by non-union labor** was fully explained by the witnesses, and also by the parties to the agreement in the "Records" of their subsequent joint conferences which were offered in evidence, hereafter quoted.

In January, 1898, not all the operators in the four States were parties to the agreement. Furthermore, outside these States there were other fields, particularly West Virginia, the coal from which competed directly with that from the four States, but which were totally unorganized.

The 1898 agreement resulted in a reduction of the hours of labor in the Central Competitive Field from ten hours to eight, and in a considerable increase in the miners' wages, despite the reduced hours.

It was evident, however, that in spite of the arrangement at the same time entered into by the operators to eliminate competition among themselves, and to keep the coal in its "natural channels," the Central operators—either in their own field or in West Virginia and other competitive districts—if the employees of the latter were to continue to receive lower wages, to work longer hours, and to be subject to the continued exactions and interferences by the Union officers.

The miners, therefore, in consideration of the increased wages and lessened hours of work provided in the 1898 agreement, promised on their side to get the independent

operators into the fold. This, as clearly shown by the discussion of the agreement in the subsequent debates of the parties thereto, is what was meant by their promise "to afford all possible protection to the trade and to the other parties hereto against any unfair competition resulting from a failure to maintain scale rates."

As a result of the 1898 agreement the higher wages and lesser hours necessarily increased the cost of production to them, but as a result of their agreement among themselves eliminating competition in "forced markets" and keeping the coal in its "natural markets" (2774), they got a sufficiently higher price for it to enable them to pay the men the higher wages. This condition could only be kept up, however, and the higher price of coal maintained, provided the cost of production to the independent operators, who might seek to sell their coal in the "natural markets" of the union employers, should be raised to be on a par with those who had recognized the Union.

The latter condition could be brought about only by the action of the miners in unionizing the competitive non-union mines.

This was what the miners agreed to do under the eighth clause of the Chicago Agreement. In consideration of the increase in wages and the grant of the eight-hour day accorded by the Union operators, the miners agreed that they would see to it, that by forcing union conditions on the competitive non-union operators, the cost of production to the non-union mines would be so far increased as to prevent them from underselling the union operators in the "natural markets" which the latter had agreed to divide up among themselves, and in which, but for the competition of the non-union operators, they could maintain the higher prices agreed on which would enable them to pay the higher cost thus assumed.

As said by the witness Taylor (2774–2775):—

> "Q. Now, as a result of that in 1898, and as it continued later the miner's wages were considerably increased?

"A. Yes, sir, considerably increased, and the conditions of employment were even bettered.

"Q. And in spite of that the operators were enabled to get enough for their coal to pay the increased wages and still make a living?

"A. By having these discussions or trade agreements, the coal found its more natural market.

"Q. And they would get more money for it?

"A. They got enough more money for it in its natural market, rather than its forced market, so that they could pay more wages, and give the men better living conditions.

"Q. And at the same time there were other operators and miners who were in competition with them in the arrangement, and who did not come in, and were still trading on a lower cost?

"A. There were; and they were still battling and fighting with each other, on the old method.

"Q. What way did the miners, what were they to do, in order to protect the operators in the central competitive field?

"A. To have the miners take the same scale rate from the other operators as was paid in the other fields."

We do not contend, as intimated by plaintiffs in error in their Brief (pages 142–143), that the Chicago agreement required the Union to destroy or close up non-union mines.

In fact, however, they frequently adopted this means, particularly at Prairie Creek.

The purpose and effect of the Chicago Agreement in its relation to the present litigation, is clearly brought out in the discussions of that agreement in the subsequent joint conferences of miners and operators in the Central Competitive Field.

These subsequent discussions were introduced in evidence not at all in connection with the subsequent agreements entered between the parties at such conference,

(which later agreements were irrelevant to the present litigation), but as showing the development of the combination and conspiracy among the miners themselves and between the miners and operators for the suppression of non-union production, and especially as showing the object, purpose and motive of the miners in their subsequent action in destroying the non-union mines of these plaintiffs.

These conferences were the schools at which the miners for years received their education in the principle that the existence in the markets of competitive non-union coal was disastrous to their movement and welfare, and that if they were to be able to continue their union relations with the operators with whom they had already entered into agreements, they must at all costs both force the independent operators to accept union conditions and prevent any union operators from breaking away.

While the brief of plaintiffs' in error contains numerous strictures as to the relevancy and admissibility of these debates (see, for example, Brief of Plaintiffs' in error, pages 20-21, 31), no Assignment of Error is predicated on their admission in evidence, the only assignment of error referring to them being the 13th which does not assign their relevancy or admission in evidence but merely one of the four reasons given by the Circuit Court of Appeals for sustaining their authentication, and which is not covered by any of the Points presented to this Court.

The Reports were authenticated both by the witness Green as the verbatim reports of meetings which he himself had attended, and also by several other witnesses as the Official Records of the conventions, published by the secretaries of the Miners' and Operators' organizations and by them distributed, the printed volumes being used by both organizations by common custom and usage for reference to the debates as the Official Record thereof.

A conclusive answer to the interpretation of the Chicago agreement suggested by Plaintiff's in error on pages

27-29 of their brief is found in the authoritative interpretation thereafter placed upon it by the parties and reiterated by both sides in their subsequent debates.

The Chicago conference was followed by another similar joint meeting at Pittsburgh in January, 1899, at which the agreement of 1898 (with certain modifications which are immaterial to the present question) was extended for another year. Thereafter, the representatives of both the miners and the operators met annually or biennially continuously down through 1916.

The debates at such conventions were offered in evidence (415–416, 461, 475, 654) and extracts from certain of them were read into the record.

Without reviewing in detail these rather voluminous debates, extracts from a few of the passages in the record will show that they established two circumstances (which were also clearly proved by oral evidence and by the extracts from the Journal and the miners' conventions), which are significant in connection with the present cause of action: *First*, that at their joint conventions subsequent to 1898, the operators were continually reminding the miners of their agreement to unionize the competitive non-union fields and chiding them with their failure effectually to carry out this agreement, and the miners were as earnestly protesting their endeavor to fulfill their contract, recognizing its existence and scope; *Second*, the operators were continually harping on the impossibility of further increases in wages or even of maintaining those in existence, by reason of the competition of the non-union operators, whose cheaper cost of production was enabling them to make increasing inroads in the markets which the union operators regarded naturally tributary to their own mines. (See Traer, 2457, 2458, 2462; McCullough, 2510; Feehan, 2518–2519; Lukens, 2677–2680).

We will also quote in their chronological order certain of the following typical extracts offered from the miners' conventions and from the Official Journal, show the effect on the miners of the demands by the Union operators.

In the 1901 convention at Columbus, Mr. Bogle, an operator from Indiana, said (2353):—

> "At the Chicago convention the United Mine Workers' Organization agreed with the operators of the four States that they would bring West Virginia into the fold. Again at Pittsburgh they promised the same."

At this same convention Mr. Lewis, the miners' Vice-President, urged on the operators the advisability from their point of view of recognizing and extending the check-off, by which the operators were asked to agree to deduct the union dues and assessments from the miners' wages and so facilitate their collection by the Union. He said (page 2355):—

> "MR LEWIS:—I think this conference is getting to that point where we should strip every question clean of every sentiment. I believe when we do that we are getting to a point where we can discuss these questions as they affect our interests jointly, and from that point I, for one, would like to know what the purpose is, and why we inaugurated what is known as the joint movement in the four States represented? In asking that question I am going to answer the question as I understand the purposes why we met. And in doing so I am willing to assume as broad a position and stand on as broad a platform as any man in this hall, it matters not to me whether he represents the operators or the miners
>
> "In the first place, as I understand it, we had something of a guerilla fight in the mining industry—every operator was seeking to enter the market and sell a ton of coal against his competitors at whatever cost. In order for them to do that it was necessary for them to reduce the wages of the miners step by step, until it became a question with the miners of this country whether it was not as

well to starve being idle as to starve working. I am free to admit that under those conditions many of the operators went into bankruptcy. If this be true, and I don't think that it can be questioned, then it was necessary not only for the miners, but for the operators as well, to assume certain responsibilities to give stability to the mining industry. Realizing this we met in joint convention. We agreed on a certain scale for mining, and every man, whether he was in the organization or out of the organization, on our side of the compact was expected to adhere strictly to every term embodied in that contract. You know, and every man in the hall knows, when the first compact was made that the miners of this competitive field were not as well organized as you and we would both like to have seen them, in order that there would be no friction between us in the year following that agreement. We have attempted to the best of our ability to adhere strictly to every agreement that we have entered into. It is true that we have asked—you may put it in the form of a favor if you please—and in some cases we have insisted that the operators would not only recognize the United Mine Workers as a business institution, but that they would go one step farther and help us compel the rebellious of our own ranks to be parties to this compact—not for the benefit of the miners, but for the benefit of the miners and operators jointly. Now let us see how much farther this movement must go to be successful. **As I understand it, it is for the purpose of wiping out competition between us as miners first, viewing it from our side of the question; next for the purpose of wiping out competition as between the operators in these four States.** When we have succeeded in that and we have perfected an organization on both sides of the question, then, if I understand **the real purpose of** *this movement, it is that we will jointly declare war on every man* **outside of this competitive**

field who will do anything in any way endangering the peace that exists between us. What is necessary to do this? Organize our forces in the competing fields so far as the United Mine Workers are concerned. **Go into these outside competing fields and tell your competitors that they have to join this movement whether they like it or not, and give stability to the coal business of the United States."**

The words in italics have been erroneously omitted from this passage as printed in the Record (pp. 2357) and as quoted by plaintiffs in error on pages 31–32 of their brief.

In the 1902 joint convention, Mr. Robbins, a Western Pennsylvania operator, said:—

> "MR. ROBBINS:—Four years ago, in the city of Chicago, we agreed to be in the advance guard on the question of an eight-hour day, **with the distinct and absolute promise that unless our competitors were brought up to the same conditions that we would be put back where we were.** And what is the result? None of our competitors have been brought up. In no place that we compete, that I know of, has an eight-hour day been established. We are competing constantly with operators that still have a ten-hour day. Their cost is proportionately less." (Page 2356.)

The effect of the above and similar operators' statements of the miners is well known by the debates in the miners' own conventions, in which they elected their Officers and Executive Board and adopted and altered their constitution and organization.

Thus, in the miners' convention of 1902, the following resolution was adopted:—

> "RESOLUTION 33.
>
> "WHEREAS, the miners of Virginia and Kentucky

in the past have been a detriment to the organization in other States by their not being organized,

"*Be It Resolved*, That our National organization shall use its power in all forms to bring these miners into the organization." (Page 538.)

The report of the Committee on Organization to the same miners' convention also contained the following:—

"We, your Special Committee, appointed to formulate a policy which would culminate in a complete organization of all the competitive fields, are fully convinced that the two Virginias have been a menace to the perfection of our organization.

"Therefore, we recommend that the National Executive Board pursue the most aggressive policy that they, in conjunction with the several District Presidents, can pursue to bring about organization in the different Districts, not only in Virginia but in all other districts." (Page 542.)

In the joint convention with the operators in 1904 President Mitchell of the miners said:—

"Every year that we have met in these conventions we have heard the statement that the reason the operators represented here could not comply with the scale of wages proposed with the miners was the fact that they were meeting an **unfair competition** from the Fairmount District of West Virginia." (Page 556.)

After the close of the 1904 Joint Convention the national officers of the miners' Organization recommended to the local miners that they acquiesce in a reduction in wages, giving as a reason that the fact of the non-existence of the Union in competitive non-union States, made it impossible to enforce their demands (page 566).

At the Miners' Convention of 1904 the following resolution, introduced by a Local Union No. 31 from

District 21 (Arkansas, Oklahoma and Texas) was adopted by the convention:—

> "*Resolved*, **That in strict compliance with our** obligations and **teaching** we accord a hearty approval to our National Board on its action in regard to District No. 15 strike, now on, in Colorado, and whatever action taken by the National that in their judgment is necessary to the successful ending in the elevation of our craft in District No. 15 meets our entire approval, for which we pledge our unqualified support, as our knowledge of the field in Southern Colorado in the event of an unsuccessful issue of the trouble now pending would work almost unsurmountable and incalculable damage to District No. 21, as it would be an **unjust competitor** in the same commercial field and could with very little effort undersell and supersede us in the Oklahoma and Southwestern Kansas markets." (568.)

In their brief, plaintiffs in error refer to a number of resolutions *proposed by* Local Unions, as if they were mere local resolutions. All resolutions in the Record proposed by Local Unions to the National Conventions **were in fact passed and adopted by the Convention** and were usually referred to the Executive Committee for action, as will appear by an inspection of the Record.

In President Mitchell's annual report to the 1905 Miners' Convention, he said:—

> "For many years special efforts have been made and enormous sums of money have been expended to organize the miners of West Virginia." (569.)

Although, in these Joint Conferences, in the discussion of competitive conditions, West Virginia formed the chief topic, as being the nearest and the largest non-union field, the debates show clearly that both operators and miners had in mind the other competitive districts

and that they realized fully the importance, for their protection, of keeping the miners and operators of the West and Southwest in their organization.

Thus in 1906 a movement was set on foot to admit the miners and operators from the Southwest into the Joint Convention held in that year. In discussing this proposal Mr. W. B. Wilson, the Miners' Secretary-Treasurer, thus explained the competitive relation which existed between the Central Competitive Field and the Southwest, including Arkansas:—

> "Mr. Robbins has stated that this proposition comes up in every convention. It is true it comes up in every convention, but it has come up in every convention because it is right, and no proposition is ever settled until it is settled right. If I understand the principle upon which this movement is based, it is to bring into the joint conference those operators and those miners whose competitive business is closely related to each other; and in asking that the operators and miners of the Southwestern Districts be admitted to this conference, we are simply carrying out that principle. The coal mined in Western Pennsylvania comes in immediate and direct competition with Ohio; that mined in Ohio, as well as that in Pennsylvania comes in competition with Indiana and Illinois; that mined in Illinois comes in competition with Iowa; that mined in Iowa comes in competition with Missouri; and coal mined in Missouri comes in competition with Kansas, Arkansas, and the Indian Territory. **They are all related to one another; they all are competitors with one another,** and it is but just and fair that each of these fields should have a representative in the Joint Conference that sets a base for the prices of the ensuing year. This is the first conference that is held. Whatever wages are agreed upon here, whether it is an increase in wages, a decrease in wages, improved conditions or otherwise, it sets the

pace for other districts, and these other districts have no voice in saying what that price shall be." (571.)

In this same 1906 Joint Conference the Operators offered an amendment to the Miners' proposition, which the miners, however, refused to accept, as follows:—

"That because of the failure in this Interstate Movement to change the conditions of a ten-hour day in the unorganized fields as agreed to in the Chicago Convention, that we return to a ten-hour day." (572.)

Mr. Chapman (Ohio Operator):—

"If you gentlemen on that side of the house will provide means by which you can stop the competition from West Virginia, from Kentucky, and from Tennessee coming into the City of Indianapolis and into Ohio Cities and taking the trade of the Indiana and Ohio Miners, then there would be some consistency in this thing. But there is no remedy proposed. This competition is going on and it will continue to go on. And if the Operators have to pay higher prices for the production of their coal in these States it means the closing, the shutting up, the destroying of the value of many of the properties." (574.)

In the Miners' Convention of 1906, the Scale Committee reporting through John P. White, then President of the Iowa District (No. 13) recommended that Districts 13, 14, 21, 24 and 25 be admitted to the Joint Conference, recognizing the competition relation which existed between the Central Competitive Field and those Districts, including the Southwest District 21 where plaintiffs' mines were located (574).

In the Miners' Convention of 1907 Delegate Green of Ohio, now the miners' Secretary-Treasurer, showed

clearly how strongly the miners realized the force of what the operators had been urging in the Joint Conventions:—

> "Now something must be done; **it is absolutely necessary to protect us against the competition that comes from the unorganized fields east of us.** I believe that a national movement would have induced West Virginia to become organized." (577.)

By a "national movement" Mr. Green of course meant a strike by the whole National Organization of Miners.

Again in the same convention Delegate Feehan, from Pennsylvania, said:—

> "The 30,000 organized miners in District No. 5 have as neighbors thousands upon thousands of unorganized miners in the Irwin field and the Connellsville region **who are a constant menace to our organization."** (578.)

Delegate O'Connor also said:—

> "Four years ago sixty per cent. of all the steam coal and practically all the domestic coal used in the city of Evansville, Mt. Vernon and for the southern trade was mined by non-union men. Through the action of that convention, and **through our effort last year, we have the non-union coal practically shut out of Indiana.** There is only one firm on Main Street in Evansville that is using non-union coal, and that is a cigar factory." (1146.)

In the Joint Convention of 1908, Mr. Francis Feehan, a leading miner from Pennsylvania, who was one of the principal witnesses at the trial for the defense in this case, said:—

> **"I am very desirous of lending all of my efforts to prevent, if possible, the production of non-union coal.** I know that it has been my policy as an officer

of the organization, to try if possible to agree along with the operators who have entered into a contract with us and are dealing as business men should do, and if I had any fighting to do I would want to fight the fellow that was unfair and who was taking advantage. We feel that this should be done." (580.)

In President Mitchell's farewell address to the Miners in 1908 he thus emphasized the menace to the miners' movement presented by the existence of unorganized miners in districts competitive with those which had recognized the Union and were subject to the increased cost of production which resulted from Union conditions:—

"The strength of your Union is not in the best organized districts. Unfortunately, and I say it regretfully, its strength is its least strongly organized fields. You cannot be permanently safe, you cannot rest in security until West Virginia, the Irwin Field, the Connellsville and the Meyersdale regions of Pennsylvania are organized. You men of the Mountains of the West are not secure until south Colorado is organized. It may cost money, it may cost sacrifice, but, gentlemen, sleep not until those men and those districts are enrolled in your Union. (Applause.)" (580.)

In the Miners' Convention of 1909, Delegate Haggarty, speaking of the necessity of organizing West Virginia and Meyersdale, said:—

"Those fields are in direct competition with us. The money of this organization should be spent in the non-union districts in order to protect the districts where an organization has been established, and wage contracts made." (582.)

Delegate Farley also said, apropos of the recent failure of the Alabama strike:—

"Something will have to be done in Alabama sooner or later if Kentucky and Tennessee are to be

protected, because if Alabama goes down so will all the States south of the Ohio River." (583.)

In the Joint Convention of 1910, Mr. Maurer, an Ohio operator, made an instructive summary of the history of the relation of the parties since 1898 and of the conditions which in 1910 forced the operators to insist on a reduction in wages. In the course of it he said:—

"The chief evil was the fact that districts which did not recognize the United Mine Workers and had no agreements with them produced coal much more cheaply than those districts which sustained contractual relations with that organization. Some of the more important factors influencing these conditions were different methods of producing coal, varying costs of mining, different hours of labor, different sized screens, not mentioning various other elements. * * * In additon to the advance in the price of mining and the other important concessions enumerated, the action of this convention had an effect of the most far-reaching and salutary character, not alone for the mine workers but for the entire labor world in the recognition of eight hours constituting a day's labor, this being the first recognition of the eight-hour day by any large body of employers in the United States. The granting of the eight-hour day by the operators, after making these numerous other important concessions, was **with the distinct understanding and explicit promise of the miners to give to the operators of the four contracting States adequate protection against the competition of the unorganized fields.** From year to year they have been called upon to fulfill that promise. The operators, parties to that agreement at the time of its execution felt that it was absolutely necessary to the safety of their investments that they be protected from the encroachments upon them by their competitors of the unorganized fields.

* * * * * *

The operators of the district here represented are willing and ready to pay as high price to their labor as is paid by the operators of districts producing coal entering into competition with them. We view this situation now actually confronting both the operators and the miners as most critical indeed. If there be any merit in the claim of mutuality of the interest, it is incumbent upon both operators and miners to meet these conditions each sharing the responsibility for the result. Our interests must be protected if our employes are to find work; and in order to protect those interests and to give that employment, we feel that this is the time for an agreement based upon a recognition of the actual conditions and wages paid in the States producing coal entering into competition with us.

"Finally, we ask for the fulfillment of the pledge of 1898 upon which we made to the miners so many important and costly concessions. Though that promise has not been kept, we have continued for twelve years to make additional concessions by increasing the mining price from 66 cents agreed upon at that time to 90 cents, and in other respects conceding demands without any compensating concessions upon the part of the miners, until we now find ourselves at the limit of financial safety. The operators can make no further concession. It is now, in our view, not only to the interests of the miners, but their duty as well to do their share to meet these conditions.

* * * * * *

"We believe this to be a true statement of facts, and therefore call upon you to relieve us as well as yourselves from the unfortunate situation in which we now find ourselves, **due to the failure of the miners' organization to keep the faith pledged at Chicago in 1898.**

"We, therefore, insist that your organization place

the districts parties to this agreement on the same relative basis as the unorganized districts with which we are compelled to compete." (583–587.)

In the same 1910 Joint Convention President Lewis of the Miners' Organization said, arguing for the unlimited Check-off:—

> "Our proposition is 'that there shall be no limit to the amount of deductions for the organization.' We mean by that that there shall be no restriction on the amount of deduction we ask from our wages to turn over to our organization. It is true that in some of the districts there is no limitation, but in other districts there is a limitation. And while I am not one of those people who believe in organizing West Virginia to close up their mines, I am one of those people who believe in organizing West Virginia in order that the operators of the Central Competitive Field as well as West Virginia operators can get better returns on their investments, and in order that we can get better returns for our labor. If we are unable to get the operators to co-operate, to get the West Virginia operators to come into this joint movement as was originally intended at Chicago the only other method we have is to spend our money to organize that State and enable the operators to do business." (588.)

At this Convention Mr. William Green, an Ohio miner, now the miners' Secretary-Treasurer, thus clearly acknowledged the obligation of the Chicago agreement:—

> **"Let me point to the fact that the United Mine Workers of America have diligently and aggressively attempted to carry out the promise made in Chicago in 1898; that they have done everything in their power to redeem any promise they may have made to organize West Virginia.** Since 1898 our organization has at various times spent hundreds of thousands of dollars trying to unionize West Virginia. We

have also sacrificed human life in the attempt to redeem that promise. In view of the fact that we have spent hundreds of thousands of dollars and that our organizers, our members who have gone there as missionaries in an attempt to redeem that promise have sacrificed their lives and their liberties, we should be given credit for what we have done. I want to ask the operators how much money they have spent and what they have done to aid us to organize West Virginia. Is the fact that we have spent hundreds of thousands of dollars appropriated from the small earnings of our people in the central Competitive Field, and the fact that we have sacrificed the liberty of some of our members any evidence that we have tried to redeem that promise? Does not that show that we have honestly, sincerely and diligently attempted to redeem it? I believe, gentlemen, that if the operators had done one-half as much as the miners have done, if they had even co-operated with us in what we have done, West Virginia would be organized and the operators and miners of that State would be here today participating in this joint movement." (589.)

Mr. Penna, an Indiana operator, said:—

"There are some facts that it is useless to attempt to ignore. The very purpose of the Union is to increase the price of labor, to reduce the hours of labor, and then when that is done in this meeting we go home and there are attempts made, and often enforced, that further increase the cost. That is the very purpose of unionism. It has no right to live on any other plane than that, or at least we have never discovered it. It has no object in existing that we know anything about except to increase wages and decrease hours of work, and it has been successful in doing it. It is also a fact that not more than one-half of the miners of the United States are unionized. Those who are not unionized work

more hours, perform more labor for less money and as a result throw on the market a cheap product. Those are the non-union men, those who are the men who are our mutual foes." (590.)

Mr. Chapman, an Ohio operator, thus referred to the 1898 agreement:—

"You made promises in 1898 that you have not kept. You may have tried to keep those promises, but you know what was said and what was done on the floor of the Convention in 1898. I was a participant in it, as I have been in the preceding interstate movement. You know what the understanding was, and you know that at every session of every convention that has been held from that time down to the present we have asked you to carry out and make good what you said you would do at that first conference. In my opinion the only way you can ever hope to succeed in putting the Union fields on a competitive basis in cost with the non-union fields, the only way you can give your people more work and the other fellows less is to reduce your wages to enable the operators to produce their coal at a cost that will enable them to take the trade. It can be done in no other way. You have tried the other process for twelve years and it has been a total failure; you are weaker now in the non-union fields than you ever were. They are producing more coal and increasing their output monthly and yearly, and it will only be a short time until the Ohio coal docks will be a thing of the past, the mines will be closed up and you without work in your own State." (591.)

Mr. Maurer of Ohio also said:—

"Keep one thing in mind, keep the facts staring you in the face that for two years your mines have laid idle while West Virginia non-union tonnage took

the markets that belonged to you and to us. We stand next to these markets. In order to maintain our markets we on this side invested our money in the great Northwest and built docks to keep the market for you. That market today is in jeopardy on account of the competition from West Virginia. Tell me, tell me in fairness, is our position not right? Considering the last two years' experiences, can you honestly ask for an advance in wages? (593.)

About the only excuse which the defendants sought, by the introduction of extracts from the Joint Conventions, to offer for their failure to fulfill their contract to organize West Virginia was the fact that certain of the operators in the Central Competitive Field (how many does not appear) had themselves opened mines in West Virginia. The reason for this was clearly stated to the Joint Convention of 1910 by Mr. Zerbe of Ohio:—

"A very considerable amount of censure and criticism has been put upon some operators who are here because of the fact that they have gone to West Virginia and found investments. I will remind the other side of the house that the men who have gone into Virginia are business men; they are engaged in the coal industry, and they bring the commodity from one State or another to furnish fuel for such contracts as they take. They have found by experience that you as an organized body are not treating them fairly where they are circumscribed in the production of this commodity. They find that you are putting upon them burdens in the organized fields that do not exist in the unorganized fields. By reason of the fact you cannot control in the production of the commodity, although we are willing to admit you have made an effort, their market is being taken from them or restricted or narrowed, and many of them in self-defense find it necessary, in order to carry out contracts and fulfill their obliga-

tions to those who take this commodity from them, to go to West Virginia and invest in properties there that they may continue a business for which they are obligated. I am not one who has done that, but I may be. They believe that at these intervals you will place their properties in the unionized sections in a position where they cannot operate them, and as a result they go to the unorganized fields and invest money and feel secure that under any conditions they can fulfill these obligations. The operators are not seeking to go there but you are driving them there by your attitude toward the people who have been your best friends." (593–4.)

In the 1910 Joint Convention, Secretary Perry of the miners said:—

"The price paid for mining in West Virginia is not the only cost of production. **Those men have bills to pay that you do not, and you know it. It is not necessary that I should mention what they are. As a result of the organization trying to organize that field there is an added cost to the production of those operators.** In my judgment, as far as the unorgan zed fields are concerned, if the miners are paid an advance in the organized fields, I do not believe it will be possible for the mines in West Virginia to operate and pay the present rate of wages." (594.)

To men like those assembled, familiar with the methods used by the Miners' Organization to "persuade" non-union operators to join the fold, it was unnecessary to explain more fully what these "added costs" might be.

Mr. Chapman, in this convention also alluded again to the necessity of the fulfillment of the 1898 agreement, if the miners were to expect the maintenance of the higher wages and lesser hours which they enforced:—

"Years ago we asked you, pleaded with you, to bring the non-union fields up to a scale of wages

that would enable us to pay you the scale you have asked for from time to time; and you promised to do it, but you have not done it and you have not kept the faith. **We would be willing to pay the scale today and make the advance if you would put those people on a level with us in the cost of production.** You know you cannot do it. You have made efforts to do it, but you are farther away from the goal now than you were in 1898 and you are getting farther away every day. You know you cannot enforce the scale of wages. In every district that you have attempted it you have practically lost out, and you are losing every day." (595.)

To this statement Mr. Green of the miners replied:—

"I do not propose to attempt to defend the non-union fields of West Virginia. I know, as do the other miners on this side, that the non-union product of West Virginia is a serious proposition. As evidence that we recognize that fact, out of the meager earnings of the men on this side we have contributed month after month and year after year, to try to organize that field **and bring them up to a competitive basis** with our friends on this side." (595).

The continuing impression on the miners of the operators' position is again shown in the miners' convention of 1910, in which Vice-President McCullough made the following statement:—

"The first principle and great need of our union is the organization of the non-union mine workers of this country. **So long as the great army of non-union men remain outside of the organization, they continue to be a menace and stand in the way of progress and advancement of the organized mine workers."** (605.)

A resolution proposed by a Local Union and **adopted by the Miners' Convention of 1911** shows the need felt by them to extend their strength in order to enable them to enforce their demand (1146):—

> "WHEREAS, Many strikes by the United Mine Workers of America have been inaugurated to obtain higher wages and better conditions of employment,
>
> "And WHEREAS, Many of those strikes have met with defeat, notwithstanding the justice of their cause, because of the fact that labor unions on the railroads, through lack of an understanding to lend their moral co-operation which every organization should give in time of conflict to each other, have aided the employers to defeat us in those strikes;
>
> "*Therefore, be it Resolved*, That the incoming International Executive Board be authorized to seek an affiliation with the seven different railroad organization, viz.: The **Engineers, Firemen, Conductors, Trainmen, Switchmen, Telegraphers and Maintenance of Way, so that in time of industrial conflict between employers and employees of any of the above named organizations, including the United Mine Workers of America, all may join together for the purpose of aiding each other in carrying their strikes to a successful conclusion."**
>
> "The Committee recommended concurrence in the resolution.
>
> "DELEGATE FEEHAN:—I move we concur in the report of the Committee."
>
> "The motion to adopt the report of the Committee was carried."

An extract from President Lewis' report to this convention also shows clearly that the miners even then saw that the Sherman Anti-Trust Act would interfere with the ends which they sought to accomplish by the means which they had in mind.

"SHERMAN ANTI-TRUST LAW.

"We have in this country a law known as the Sherman Anti-Trust Law. Its alleged object is to destroy trusts and to prohibit combinations that are inimical to the interest of the people.

"We have no knowledge that the great industrial corporations have been limited in their authority to control certain commodities. There is no likelihood that the Standard Oil Company, the United States Steel Corporation, and other great industrial institutions, will be dissolved by the enforcement of the provisions of the Sherman Anti-Trust Law.

"This law, like others enacted for the alleged purpose of protecting the rights of the people, is in reality being used to deprive the wage earners of the rights to organize. We know that the Sherman anti-trust law, as well as many similar State laws, are being used to keep the mining industry from being elevated to a higher standard.

"In my opinion the Sherman Anti-Trust Law and every other law of similar character, should be either amended or repealed, and instead of attempting to regulate corporations and trusts in the manner provided by the Sherman law, the National and State goverments should enact laws providing for a method of taxation that would remove any incentive for large corporations to accumulate wealth by illegitimate methods.

"As laboring men, and especially as mine workers, we should lend every influence we possess to repeal those provisions of the Sherman law that deprive us of our right to organize and establish the object for which we are united. Now is the time to act as we may at any time, be made the victims of a law that was enacted to control trusts but which is being diverted to destroy organized labor." (1147.)

From the proceedings in the Joint Convention of 1912 it is apparent that the conditions still persisted which

had given rise to the previous discussions. The operators insisted that the miners could not expect higher wages and lessened hours, unless they fulfilled their agreement to bring up the cost of production to the operators in the competitive non-union States, and thus relieved the union operators of what the miners termed "unjust" competition, *i. e.*, competition by operators who did not recognize the Union.

Early in the proceedings in the 1912 Joint Convention Mr. Hayes (later the Miners' International President), said:—

> "Today there is a splendid sentiment among all the non-union operators of the South in favor of this organization. I want the operators to realize that this organization is doing everything in its power to limit unjust competition. We believe in **fair competition** between operators and I want to assure you that we are doing everything in our power to limit **unjust competition."** (1110.)

The operators' proposition propounded by Mr. Taylor, of Illinois (one of the witnesses for defendants in this case), to this Convention, contained the following:—

> "The experience of the last two years under the present scale of wages and the losses sustained by reason of the wide difference between the prices paid in this competitive field and the non-union fields with which the product of our mines enters into direct competition makes it imperative that some relief be given us.
>
> "Unless this situation is changed and some relief given, our tonnage will be still further reduced and our markets still further absorbed by these **non-union fields,** with a repetition of the financial losses for the next wage period that we have sustained during the present and a consequent loss of employment to the miners.
>
> "With this condition actually existing we have no recourse but to ask that the miners bear their

part of the burden, and to meet this condition, grant us a substantial reduction." (598.)

Mr. Penna of Ohio thus referred to the reasons why the non-union operators were able to take away their markets:—

"The mine workers of West Virginia either do not want to be unionized or the employers in West Virginia do not want them unionized, or both.

"I am not going to attempt to explain why the men of West Virginia do not want to be unionized. That has never been clear to me; I don't understand it; but I can understand why the employers do not want them organized; and one of the chief reasons is because they see and know from public and private sources how employers are treated in localities where the union is strong. And they properly conclude that it is cheaper by any method which they may see fit to adopt by all the methods which they may see fit to adopt, it is cheaper to adopt those methods and pay the bill than it is to submit to the unionizing of their properties. They are properly afraid of what might be the consequences. They will read the reports of this meeting. They have of other meetings just like it. They see where we have talked of a desire to unionize West Virginia for only one purpose, namely, to exclude them from the markets in order that we may replace their product with ours. And hence they lay back and conclude, 'We are going to take no chances. We have those markets and we are going to maintain them as long as we can and encroach as much farther as we may.' They see reports of meetings of this kind and of the miners' demands. They read of the continual strikes and disputes and turmoils and violations of contracts in districts that are unionized, and they conclude it is cheaper to remain non-union, that it is more profitable after paying all of their expenses, than it is to unionize." (603.)

Further on in the debate Mr. Penna again said:—

> "I believe every man in this side of the house is willing to give just as much as the business will permit, in view of our surroundings. Organize these Virginians and organize the Kentuckians, organize Central Pennsylvania and then move up together. Level up and then move, but don't keep moving the highest." (608.)

John P. White, the Miners' President said:—

> "We are as anxious to establish the organization in the West Virginia Fields and the other non-union fields as the gentlemen on the other side of the house are to have to do." (612.)

Mr. McDonald was even more emphatic in protesting as to the strenuous efforts which his fellow miners had been making to protect the Central Field against the inroads of non-union competition. He said:—

> **"We have had men go to jail. We expect that more of us will go to jail. The penitentiary doors have no terrors for us, as far as that is concerned. And if putting two or three hundred of our men in jail will organize West Virginia we will send two or three hundred down. The chances are we will have to get busy with that situation shortly."** (Page 1118.)

Does the foregoing extract tend to show, we ask, that the miners had, in their efforts to carry out their agreement, been restricting their activities to legal and law-abiding methods?

While most of the foregoing discussion related to West Virginia and fields other than Arkansas, the importance of such debate in the present proceedings lay not in the particular locality under discussion, but in the principle and motive which was thereby being instilled continuously into the minds of the union miners, not

only in the Central Field, but throughout the country, by the teachings of their officers and representatives.

It will be noted that through all these years practically the same men were continued in charge of the Union, enabling them to develop and make effective a definite plan and policy. They firmly instilled into the entire membership the basic thought that the presence of a non-union operation in competitive proximity to a union mine was a direct menace to the maintenance of the union in the latter, since the non-union operator, by reason of his less cost of production, could undersell the union operator in the competitive markets and thus force him, in view of loss of trade or bankruptcy, to stand out for the abandonment of union conditions.

This principle was obviously applicable not only to the organization of non-union fields, but in equal or even greater force to the retention of the Union in fields already conquered, for **if an existing outlying non-union field was a menace to its neighbors, the breaking away from the Union of an operator in the midst of Union competitors would clearly be an even greater menace.**

This condition was brought out by Mr. Walker, the President of the Illinois miners:—

> "The places that are nearest the non-union mines, of course, have got to be the ones really that are up against the strongest competition. They are the ones where the situation is the most serious—and I don't care whether you leave it as it is now, and we will say West Virginia and Kentucky are the worst places—if you will organize West Virginia and disorganize the fields that are organized now, the shoe will be simply put on the other foot. If you organize Kentucky and disorganize Indiana tomorrow morning the thing will be reversed and men from Kentucky can make the same argument you are making now. Until every mine is organized and a joint agreement reached covering them that is fair that will be true. There is the place the shoe is going to pinch the tightest." (613.)

During the course of the debate Mr. Chapman again referred to the Chicago agreement:—

> "When we met in Chicago in 1898 and re-established the interstate movement the competition from non-union fields was the element, gentlemen, that entered into negotiations in the adoption of the scale that was made there. It was agreed to by both sides, and the question also of the ability of the miner to earn a fair day's wages for the labor he performed entered into it. At that time the miners were receiving 56 cents per ton for producing coal. I made motions in that convention that increased the day wage scale.
>
> **"It was understood in that convention, although it was not placed in the agreement, that the miners of the competitive field of the four States were to bring the non-union fields up to the price paid for mining in those States, and unless they secured the adoption of an eight-hour day at the next convention the competitive field was to be relieved of these burdens.** That was not in the agreement. Unfortunately, gentlemen, the proceedings of that convention were not published. If they were published it would be found that the President of the United Mine Workers and the gentlemen who aided and assisted him in bringing about the results there, agreed that they should be relieved." (613–615.)

On page 28 of their brief plaintiffs in error refer to the above passage as showing that the Chicago agreement did not require the unionization of the non-union fields. Such, however, is not its effect.

What Mr. Chapman evidently meant was that while the Chicago agreement specified that the miners would organize the non-union fields, it did not specifically provide that if they failed to do so within one year the operators in the four states were to be relieved of the eight hour day.

In President White's annual report to the Miners' Convention of 1912 he said, relative to the Colorado strike then in progress:—

> "The importance of maintaining the Union in District 15 (Colorado), and securing a thorough and complete organization of the entire district scarcely needs any argument. The miners of Montana, Wyoming **and the southwest realize its importance from a competitive standpoint."** (615.)

In an article in the United Mine Worker's Journal for September 26th, 1912, Adolph Germer, one of the paid organizers of the International Union, said, relative to the strike in West Virginia instituted shortly previous by the National Organization:—

> "West Virginia has always been the barrier to out progress, a dagger in the heart of the United Mine Workers of America, by its unorganized condition. **In every Interstate Joint Conference between the miner and the mine owners, the latter have raised West Virginia as their battle cry against our demands.** The vast amount of non-union coal that is mined for practically nothing in that State has made inroads in **the markets that rightfully belong to the central field** to such an extent that we have reached the limit of our progress in the way of higher wages and better conditions. The east must be brought up; and if there ever was a time to withdraw that dagger from our hearts and forever wipe out that cry of "cheap coal" from West Virginia, that time is now (615).

In an official statement in the Journal for February 20th, 1913, Vice-President (later President) Hayes said:—

> "We will spend every cent in our International treasury, collect a million dollars or more by assessment **and tie up every non-union mine in the country,**

if need be, in order to redress the wrongs of the West Virginia miners, and in saying this I express **not only my own view, but the views of President White and our entire Executive Board."** (1146.)

In his Annual Report to the Miners' Convention of 1914, held just prior to the Prairie Creek Strike, Vice-President Hayes said:—

"In compliance with the oft repeated desires of our members, we have, during the past two years, waged a vigorous campaign in the non-union fields. The organization of the non-union fields is one of our chief tasks and the culmination of the campaign we have started must and will result in the complete organization of the coal mining industry of the land. We must never rest content until this goal is achieved. Our chief hope of future preferment, better wages and better conditions depends upon our success in the organization of these fields. * * *

"With the indorsement of this Convention and with your expressed determination to support and sustain the action of your International Officers in this work, we propose to carry on this campaign with renewed vigor, and will never cease our activities until the last remnant of non-unionism in the mining fields is forever removed." (530–531.)

To the same convention President White said:—

"The production of coal in the non-union fields is increased because of the conditions we create in our well-organized fields; and then we make it doubly hard to go into these fields and organize them because we favor them with this increased production and they have taken our markets because they are on an unfair competitive basis." (620.)

On May 18th, 1914, addressing a Convention of District 21 at Fort Smith, while the Prairie Creek Strike was

still in progress President White said, relative to the Colorado strike then at its height:—

> "A great many of you men realize how much the organization of Colorado is to the progress of the Southwest. * * * We cannot surrender the strike in Colorado. You men in the Southwest will appreciate more than any other class of men the establishment of the union in Colorado and New Mexico, for with the fall of Colorado, New Mexico must fall in line." (620–621.) (1135–1144.)

The foregoing are merely a few of the many more similar extracts from the proceedings and official publications of the United Mine Workers, found in the Record in this case. They amply justified Judge Elliott in his conclusion, in denying defendants' motion to direct a verdict in favor of the National Organization. (345, 3179, 3180).

He thus summarized the foregoing evidence:—

> "There has been evidence produced tending to show concerted action on the part of the union miners of District Twenty-one with the union miners of the entire national organization and the heads of that organization, tending to demonstrate, in the judgment of the Court, the idea and motive entertained by the entire organization and all the members of it, that it was necessary, in order to protect the union workers in the fields already unionized, to unionize the non-union fields, as well as to hold all those which were already unionized.
>
> "In the opinion of the Court there is evidence tending to show that there runs a thread of universal conviction upon the part of all of the officers of the national organization, extending down to the officers and even the members of the lower organizations of the United Mine Workers of America, that the interests of the United Mine Workers (and that they should be in a position to enforce their demands,

absolutely), demanded the unionization of all fields and the prevention of non-union mined coal, and the prevention of the competition of non-union mined coal in the markets of the country with union mined coal." (3180.)

The evidence not only justified this opinion but showed conclusively that at the very beginning of the relations of the miners and the union operators, it was agreed between them that the continuance of these relations was conditioned on the miners protecting the operators against the competition of the lower-cost non-union mines; that practically every coal field competes, directly or indirectly, with every other, either, in the case of contiguous fields, by sending the coal to the same point of consumption (709, 710, 571, 2055–2056), or, in the case of those more remote from one another, by forcing the intermediate fields to expand their consumption points (711, 571, 2056); that the method contemplated by the parties in affording such protection was the imposition of union conditions on the non-union mines which would increase their cost of production and so prevent them from shipping their coal to markets other than that in their immediate vicinity; and **that for twenty years it had been instilled into the miners' organization, officers and privates, that their growth and prosperity as an organization, depended more than anything else, first, on keeping all the union operators who had so far signed up from breaking away from the union, and second, on unionizing the non-union fields.**

It was perfectly apparent to the union officers and members, in April, 1914, that if Bache should succeed in getting started non-union, and so decrease his cost of operation to the extent of 25c. per ton, he could at once not only undersell all the near operators in his immediate vicinity—Arkansas and Eastern Oklahoma, —but could expand his markets far beyond the points to which hitherto he had been able to ship, and so take the market from the union operators in Iowa, Missouri, Kansas, Illinois and other States who shipped to these common points of interstate competition.

2. Acts and Declarations of Officers and Members of the Union and their Sympathizers, Participating in the Destruction of Plaintiff's Business and Property, and Use of Union Funds thereof.

Having in mind the structure and powers of the Union and the motive and purpose on its part to prevent the production and shipment of non-union coal, we may now turn to the events which immediately preceded the destruction by defendants of plaintiffs' business and property in the spring and summer of 1914.

Early history of the companies.

Bache and Denman had started their Arkansas operations in about 1903, under union conditions, as members of the Southwestern Operators' Association, composed of practically all the union operators of Missouri, Kansas, Arkansas, Oklahoma and Texas (675).

These operations were under a closed shop contract with the United Mine Workers under which none but members of the United Mine Workers might be employed, the Union insisting wherever a non-union man was employed that he immediately join the union or else be discharged (673–674).

The Companies contrived to operate under such conditions until 1910, when an attempt was made to start the Mammoth Vein Mine open shop, with a part of the employes not members of the Union This attempt however was unsuccessful as the men became frightened at a union demonstration which occurred during the first day or two of the operation and quit (674).

After this unsuccessful attempt the operations were put back on a union basis, operating under the closed shop contract with the Union entered into by the Operators' Association on behalf of all its members.

As things, went, on, however, the cost of operation kept increasing faster than the price obtainable for the coal, so that by the end of 1913 Bache was face to face with the alternative of reducing his cost of production, or bankruptcy.

Reasons for higer cost of operation in closed shop mines.

The main source of the increased cost was the unreasonable exactions of the Union. High wages and the eight hour day were not objected to. The non-union operators in the vicinity paid the same or higher wages than the union mines (2052); they did not **require** the miners to work more than eight hours. The difference was that whereas in the open shop mines the ambitious men were permitted to work overtime and to do more than the minimum amount in the time they did work, in the union mines no miner was **permitted** by the union to work more than eight hours in any day and none were allowed to work on "idle" days when all were not working.

The witness King, who had operated both union and non-union, thus describing the principal reasons for the lesser cost of production in the non-union operation (pages 2050–2051):—

> "Q. Did you find it was more expensive to operate under a contract with the union or under non-union conditions?
>
> "A. Well, paying the same rate of wages, or the scale of wages that is paid by the union, I found in the first two years operating under the open shop plan, that I produced my coal 17 cents a ton cheaper than I did while operating with union labor.
>
> "Q. Now to what do you attribute that saving of 17 cents?
>
> "A. Well, I attributed it to being able to run my mine a greater number of days during the season, or during the year, than I could operate on account of the controversies and shut-downs with the pit committees, and so forth.
>
> "Q. In operating under non-union conditions was there any fixed number of hours that the men were required to work?
>
> "A. Well, it is just the same, eight hours constitute a day's labor under the contract I had with the union. Eight hours is all we work now. That constitutes a day's work now, but we allow our men,

—we have a very low vein of coal, it only runs from 32 inches to 36 inches and the men all complain if they can't make enough coal at one shooting, or if the shots fail at 4.00 o'clock, that then they have not enough coal to work the next day, **and we allow the men, if they want to, to go back in the mine after supper, or on idle days and prepare their coal.** They will go back in the mine and shoot the coal and load what cars they can get, and it enables them to load more coal the next day. I have something over 100 pit cars, and the miners will go in the mine and load up all of those empty cars and shoot down coal and pile it up and have it ready to load the next day when there are cars to load it into. And in that way it increased my tonnage and brought down the cost of production because there is a certain expense I am put to each and every day whether the mine operates or not."

King then went on to explain that the men were paid for the extra time either by the ton or by the hour, the rate of wages paid by him **being higher than the union scale exacted in the region** (page 2052).

It was conditions of this kind (see Bache, 678–682, 718–719; Hilling, 2301) which did not materially benefit the men but which seriously hurt the operator, which increased the cost of production in the union mines at least 20% above that in an open shop mine (Bache, 682; Hilling, 2301).

The local union officers, in order to maintain their prestige with their constituents, were continually raising point after point and controversy after controversy, until finally conditions became unbearable (678–682, 719.)

Determinati no to start open shop.

After investigating the relative conditions in the two classes of operations, visiting open shop mines in the neighborhood, and receiving a report from his superintendent strongly recommending the course (717), Bache determined that his only salvation was to attempt open shop, in

spite of the fact that his previous experience and knowledge of the Union led him to believe that he would have trouble with them.

At this time Bache held a membership in the Operators Association on behalf of three of the operating companies, the Coronado Coal Company, the Prairie Creek Coal Mining Company and the Mammoth Vein Coal Company.

While it is true that this association had a contract with the union running to July 31, 1914, this agreement had been and was being so frequently broken by the union in connection with the Bache-Denman Companies as to give then the right to withdraw from it at will. (678–682, 718–719).

The Mammoth Vein Coal *Mining* Company, however, (all the stock of which was owned by the Mammoth Vein Coal Company), was not a member of the Operators Association (689–690), and so not a party to the contract with the Union.

It was also a foreign (West Virginia) corporation and would thus be able to apply for an injunction in the Federal Courts in case of trouble with the union. As the local officers and judiciary were so thoroughly union in sympathy as to make it impossible to expect adequate protection from them (see *infra*, pages 79, 81, 86 and 87-88 of this Brief) this was an important consideration.

A contract was entered into by the Mammoth Vein Coal Mining Company to operate the properties of the Prairie Creek Coal Mining Company and the Mammoth Vein Coal Company (682–683) and Bache withdrew from the Operators Association on behalf of the three companies which he represented in it, which companies had paid no dues to the Association after January, 1914 (689).

Preparations to start open shop.

On March 28th the Prairie Creek and Mammoth Vein Mines closed down as union mines (685) and preparations were made to start open shop.

These consisted principally in preparations to prevent damage to persons and property by the Union miners, which was expected not only by Bache but by the employees engaged by him (683–684, 1364).

All removable inflammable material around the mine was taken away, a wire rope was stretched around the enclosure, notices were posted warning all but employees off the premises, and electric lights were placed around (684–686, 1789–1790).

Bache also engaged four men to act as guards, arming them, but instructing them carefully not to use their weapons except in defense of life (686, 1204, 1353, 1363).

Employees for the open shop operation were also employed as fast as they could be secured, beginning with about a dozen.

No discrimination against Union men.

In the selection of these men, no discrimination was made between members or former members of the United Mine Workers and non-members. The Union men were told "that we would be glad to have them come to work and to stay at work." (Bache, 2331).

A number of the original employees were Union men or former members. Sylsberry (1202) probably later lost his life on that account. Hobson, Nixon and Hallowell were advertised as "scabs" by the Union and Sylsberry and Sam Brown were expelled for working for the company (2465, 2399, 2467).

This was a strike and not a lock-out.

During the trial defendants sought to have it appear that this was a lockout and not a strike. This contention, however, was absurd. Indeed, it was frequently called a strike in defendant's own official reports and publications (1462, 2391, 1928, 2396, 2436, 2468, 2470, 2648), and also during the trial by defendant's own President under examination by his own counsel (1637, see also 2661).

The Company had no difficulty in securing men to work so long as they were protected from the assaults of the unionists (727–729).

Hoisting coal the signal for trouble.

Throughout the whole trouble there were never any active demonstrations, or serious outbreaks at the mines while the company was merely making preparations, pumping out the mines, and getting their organization into working conditions. **It was when they began to hoist coal for shipment to market that the trouble began** (see Caldwell, 1369–1370; Cheek, 1435; Suttles, 1475; Moore, 1561).

Events Immediateiy Preceding the Riot of April 6th.

The formal opening of the mines on an open-shop basis was scheduled for Saturday, April 4th, and the employees began arriving at the mine on that day or a day or two before.

On Friday, April 3, a few of the Union men congregated around the mine, one of these being Clint Burris (1205) who afterwards proved to be one of the principal participants in the union activities.

There was no disturbance however, on Friday.

Events on Saturday, April 4th.

On Saturday, April 4, there was also considerable congregation of miners around the property (1205, 1206), Burris making an unsuccessful attempt to get inside the enclosure, ostensibly to visit some of the employees (1206, 1208).

Slankard's visit to the mines.

On this day also James Slankard made a visit to the mines. Slankard was a local constable at Hartford and was also a prominent committeeman in Local Union No. 1530 at Hartford (2383). He was one of the prime movers in the later disturbances, his position as a local peace officer giving him a useful status, in that, while passing as keeper of the peace, he could engineer the riots in a more effective manner.

On Saturday Slankard came to the enclosure and there met Mr. Bache and Barnes (1206–1207), who was chief of the guards. They told him of the instructions which had been given to the guards not to start any disturbances and not to use their weapons except in protection of their lives (1201, 1212, 687–688).

Slankard promised to co-operate with Bache in keeping the peace (1208).

Events on Sunday.

On Sunday there was a larger crowd of Union men around the mines, and there were some minor disturbances (1209), including rock throwing toward the houses where the employees lived (1210), calling "scabs," &c. (1353–1354, 1790), Burris being a prominent figure in the crowd.

Barnes telephoned for Slankard, who came out and after the matter was explained to him, he told Barnes that the

miners had no business coming out there on Sunday, when there was nothing doing, so they finally went away (1211).

No cause for subsequent arrest of Barnes and Bailey.

There was absolutely no evidence that on this Sunday, either Barnes or Bailey were implicated in any altercation or disturbance with Clint Burris or with any other person, which might have formed the basis for their subsequent arrest on the charge of disturbing the peace (1213, 1353).

Intimidation of Argo.

One of the men who had been employed by Bache for some time prior to April and who stayed on when the mine opened non-union was W. H. Argo.

A few days before April 6 he was approached by Speck Reed, a member of the Union who had previously worked at Mammoth Vein No. 1. Reed asked Argo if the Company was going to run open shop, and told him "That if they did it was going to be like it was at Denning, if they did, they would not last longer than Pat stayed in the army." (1187, 1191).

Intimidation of McLaughlin.

One of the men who had been employed to go down and help guard the mines was S. P. McLaughlin, who had been recommended to Bache by the chief of the police at Fort Smith (1169).

He arrived at the mines on Sunday, the 4th, where he was met by Clint Burris, the latter having known him when McLaughlin was night jailer at Fort Smith, and Burris was in jail there (1167).

Burris asked him if he was there to guard, and told him he was too good to guard scabs. The crowd then gathered around, including Burris and Bill Johnson and other union men, who told him that he had better leave, and that if he stayed there he would get hurt (1167).

He told them that he was going back on Monday, but they urged him to go at once (1167–1168).

On Monday morning they met him again and repeated the warning, telling him that the Company should not operate the mines under any consideration unless they signed up (1168). He left and went back to Fort Smith (1168).

Intimidation of Thurman Looper.

On Sunday, April 5th, Thurman Looper, another company employee, was visited by Manick, Burris, Howard

and Johnson, all prominent local Union members, and told that there was to be a very large meeting the next day; that they were going to stop the work that the company was doing and that they were "expecting to have trouble." Looper quit the same night (2351–2352).

Meeting at Hartford.

On Sunday, April 5th, a meeting of Union miners was held at Hartford, evidently preparatory to the riot of April 6, at which a telegram was read (Tyler, 1579–1580).

There was also a discussion in Hartford of the coming demonstration at Prairie Creek (W. F. Meeks, 1720; Hamilton, 2569).

Closing of stores.

Union leaders went around Hartford to various storekeepers and insisted that they close their stores on Monday and go out to Prairie Creek for the demonstration (Womack, 1453, 1454, 1455; Tyler, 1579, 1580, 1581; W. F. Meeks, 1721; Cole, 1750–1751).

McNamara.

One of the principal union men who thus visited the Hartford merchants was James McNamara. He was Financial Secretary of Local No. 1526 at Hartford (1724, 2450), and check weighman at No. 4 Central (1742–1743) and with Slankard was the Field Leader of the miners in this entire affair (Cole, 1750, 1752). He was one of the eleven Union "members and representatives" who pled guilty to conspiracy to violate the laws of the United States in disobeying the Court's injunction, and served two years in the penitentiary therefor.

Since Hartford was composed practically entirely of union miners on whom the merchants depended for their livelihood, they felt that, in self protection, they must do as the miners required (Womack, 1453, 1454, 1455; Meeks, 1722).

Closing of Union mines.

On April 6, the day of the Prairie Creek Riot, all the union mines in the vicinity of Prairie Creek, employing many hundred Union miners, were shut down through lack of men. The men simply did not appear in the morning (E. Bohannon, 1421; Boring, 1742; Beaty, 1747; Castle, 1826; Van Hecke, 1829). No reason was ever given for this by the men, and it is, in itself, conclusive proof of a previous agreement on their part among them-

selves to be away and doing something **all together.** What they did will shortly appear.

Warning of trouble.

Early in the morning of Monday April 6, some men came out to the mine and asked if they were not going to shut down (Looper, 1153). One of them told Argo there was a crowd coming from Huntington to tear down the tipple (1184). A local peace officer also appeared and told Barnes that something was going to happen in the afternoon (1214).

Arrest of Barnes and Bailey.

Early in the morning of April 6, Slankard and Baker (another Hartford Deputy Sheriff) came out to the mines with a warrant, sworn out by Clint Burris, charging Barnes and Bailey with disturbing the peace. Slankard arrested Barnes and Bailey and started to take them to Hartford in a buggy which they had brought for the purpose, but the Company put up a cash bond of $300 for them and they were thus permitted to remain on the property (Barnes, 1213–1214; Bailey, 1354–1356).

The evident purpose of the Union in thus arresting Barnes and Bailey was to get them away from the property, before the crowd came out later in the morning.

The Riot of April 6th.

Gathering of the crowd.

The principal towns in the neighborhood of the Prairie Creek mine were Huntington, with a population of about 2500 (1412), four miles east of Prairie Creek; Hartford with a population of about 2500 (1453), two miles southeast of Prairie Creek, and Midland with a population of about 1000, three miles north of Prairie Creek.

All the inhabitants of Hartford, Huntington and Midland were miners or dependent upon miners for their livelihood (Kissinger, 1878; Degen, 1412–1413).

A little before noon three crowds appeared, one coming from Hartford, one from Midland, and a third from Huntington, the latter being preceded by a band (Looper, 1153); the total crowd finally amounting to between 1200 and 1500 persons (1197, 1215).

Meeting of Local Union Hall.

About a quarter of a mile above the company office at Prairie Creek Mine No. 4 there was situated the Union

Hall and Headquarters of the Prairie Creek Local Union, also known and referred to in the testimony as the Schoolhouse (Schell, 1674; M. W. Weston, 1853).

On the arrival of the crowd they held a meeting in front of the Local Union Hall (Looper, 1153; Ritchie, 1161; Argo, 1184; Sylsberry, 1197; Barnes, 1215; Bailey, 1356; Caldwell, 1367, 1371, Mrs. Degen, 1406, 1410–1411; Cheek, 1426; Mrs. Levi Brown, 1514; W. F. Weeks, 1721; Hackett, 1791).

Speeches by Slankard and McNamara.

The meeting lasted about an hour or two (1215, 1791). Speeches were made by Slankard and McNamara (Meeks, 1721; Hamilton, 2569) and also by Miss Freda Hogan, the daughter of a prominent local socialist ("United Mine Workers Journal" of April 16, Record, page 2385) the purport of which was that they should "persuade" the non-union men to quit work (1721) or to join them in the Union (2385).

Slankard's visit to the office.

Slankard then went down to the office within the wire enclosure and asked Mr. Cameron, the superintendent, if he would see a committee. Meanwhile the crowd came down to the rope and proceeded to heckle Barnes and Bailey who were on guard just inside (1185, 1721–1722).

Committee to see the Superintendent.

The committee consisted of Slankard, John Manick, President of Local No. 1565 at Midland (2380) and Ves Howard, a prominent member of the same Local (1184).

As they were going into the office Barnes, who anticipated trouble as the crowd was pressing into the enclosure, asked Slankard and Deputy Constable Baker, who was also present, to suppress the disturbance and help them get the crowd out of the enclosure (1218). Slankard and the other two committeemen, however, went on into into the office where they had a conference with Cameron the purport of which was that the miners wanted the company to abandon its attempt to run non-union, and close the mine down (Argo, 1185). Howard told Cameron that they didn't want this to be a repetition of Colorado (Hackett, 1791, 1802) which in view of

what all parties knew as to the recent Colorado riots, was a most effective threat.*

Meanwhile, the crowd had broken over the ropes, and attacked Barnes and Bailey, who made no resistance (Looper, 1154; Barnes, 1216–1221; Bailey, 1356–1357, 1363; Cheek, 1427; Meeks, 1723; Cole, 1751; Hackett, 1792; Thrasher, 1839, 1840, 1844). Beating up of Barnes and Bailey.

They were beaten up so badly that both had to be sent to the hospital at Fort Smith (Dr. Cooper, 1855).

Although there were present at least two constables (Slankard and Baker) and Sell Soddard (the Town Marshall of Hartford) (1155), no attempt whatever was made by them to prevent the assault or to apprehend the offenders.

Identified in the crowd which attacked Barnes and Bailey were the following:—

John Bumpas, Don Fitzgerald, W. P. Fitzgerald, Clint Burris, Fred Wooten, John Wooten, Jim Lee, Edward Davenport, Frank Canfelt, John Graham, Sid Shaw, Howard Shaw, J. W. Howard, A. S. Howard, John Manick, Tom Rodden, Claude Carruth, Andy Kyle, J. H. Rodden, Marion Hulsey, Madge Hulsey, George Manick, Jim Slankard (Hackett, 1795–1796); Charley Clayborn, Everett Wooten, Jim Walker, Sandy Robinson, Dick Blair, Jesse Griffin, U. S. Buzan, Gus Buzan, Leo Bock, Jim Meeks, (Thrasher, 1839–1840); Fred Todenhauffer, H. A. Brooks, Joe Overman, George Hamilton, Joe Nick (Argo, 1185) (1456); Mike Cisco (1157); Will Shrum (1453) Fred Moton (1457). Identified participants.

These men were either members of the union or union sympathizers. Most of them are named as individual defendants in this case.

As a result of this occurrence Cameron determined that it was useless and unwise to resist further. He telephoned Bache at Fort Smith and told him of conditions and was instructed to quit and to come to Fort Smith (688). Unconditional surrender.

* What the miners termed the Ludlow Massacre did not occur until April 18th, so that Howard's reference was clearly not to alleged attacks by the non-union employees or guards

Slankard's speech to the crowd.

Slankard, on hearing this, went out and made a speech to the crowd (1186, 1198), telling them that the company had capitulated (1724, 1427). The crowd then invaded the property and took possession (1427, 1793), the whistle was tied down so as to emit a continuous blast (1194, 1368, 1428, 1793), and the miners hoisted a large American flag on the tipple alongside of which was placed a banner bearing the words:—

Union banner on the tipple.

> **"This is a Union Man's Country"** (1368, 1529, 1751, 1793, 2390; see also 1165).

It was this flag which John P. White, President of the National Association, referred to in his report of this occurrence to his Executive Board at its next meeting on May 4th as the **"Flag of the United Mine Workers"** (2390; see *infra*, pages 127–128 hereof).

Union committee to intimidate employees.

Hackett, the Assistant Superintendent, and Argo, the bookkeeper, with a few others, stayed in the office, Cameron being afraid to go out (1797, 1802).

Meanwhile a committee from the local Union (1156), consisting of Manick and Howard, had been around to see a number of the employees, asking them if they "had the nerve to come out and face the crowd" (Looper, 1156; Ritchie, 1161; Cheek, 1427). Needless to state, none of them had the nerve (1161, 1427).

Running off company foreman.

After Slankard's speech to the crowd and the hoisting of the Union Banner, Slankard, with Goddard (the Hartford Town Marshall, 1155) and a number of others came into the boiler room and told Looper, the foreman in charge, to pull the fires and shut the mine down (1155, 1198).

Beating up of Sylsberry and Looper.

Looper instructed Elmer Searles, the fireman, to draw the fires, but just then the crowd surged into the boiler room and Searles, who, as Secretary-Treasurer of one of the Local Unions (No. 567, at Hartford), was the particular subject of the miners' wrath, ran out the back, pursued by the crowd throwing rocks at him (1155,

1156, 1161, 1162, 1186, 1199, 1457) and "everything they could get hold of" (1367).

Looper and Sylsberry then pulled the fires themselves and as they finished the crowd attacked them and beat them up (Looper, 1157; Sylsberry, 1198; Cheek, 1428; Meeks, 1723–1724), so that they had to go to the Fort Smith Hospital (Dr. Cooper, 1855).

Later a union miner, Ed Baker, showed one of the plaintiff's witnesses, Goacher, a pair of bloody shoes, which he said he had used in kicking Looper's teeth out (1456). The teeth themselves were proudly exhibited by Jim Meeks, another union miner (Weston, 1870); see also White (1385).

Sylsberry was kicked and beaten by two union miners, Newman and Burris, whom he identified (1198; see also Cheek, 1428).

A Hartford physician, Dr. Chambers, one of the defendants, was present in the crowd, but refused to treat Looper's wounds, stating that he "would not dress a God damn scab" (1158). Dr. Chambers.

Slankard and Goddard, both of whom were present (1185), made no attempt to interfere or to bring the offenders to justice. Failure by local peace officers present to make arrests.

Looper subsequently sued Slankard, Mike Cisco, Burns, Dr. Chambers, Joe Overman, W. P. Fitzgerald, John Kiger, Tom Kiger, Chas. McCowen, Louis Fioretti, Vergil Strand, Pete Clements and John Bumpas for damages and recovered a verdict of $1250 which was affirmed by the Circuit Court of Appeals. We have quoted from the remarks of the Circuit Court of Appeals relative to this occurrence in another part of this brief (*infra*, page 148).

As a result of this "demonstration" and "persuasion" on the part of the Union, the employees left the property, and the pumps no longer being operated, the mine was allowed to fill with water (1359, 1368). Injury to the mines.

There was also considerable injury to the goods of the employees (1358), and an attempt was made later in the day to burn the tipple, the fire being fortunately extinguished by a thunder shower (1516, 1517, 1531).

Such few of the employees as remained in the afternoon were visited by committees of the Local Unions and "persuaded" to leave (Ritchie, 1162, 1164; Caldwell, 1368; Mrs. Barnes, 1317; Levi Brown, 1529–1530; Mrs. Levi Brown, 1515–1516).

Subsequently members of the union distinctly admitted to the witnesses that the whole affair had been engineered by the Union, and acknowledged their participation in it (Goacher, 1456).

Events between April 6th and July 17th.

On the following day, April 7, Argo, who lived with his wife a short distance from the mines, was visited by a crowd of ten or fifteen miners, headed by W. J. Gwyn, the Secretary-Treasurer of the Frogtown Local Union No. 2110, and warned that unless he and his wife moved they would be killed (Mrs. Argo, 1183; Argo, 1190, 1195). Gwyn said that they had nothing against him personally, and warned him as a friend (1183,1190). Mr. and Mrs. Argo thereupon left and never retured (1183).

Two weeks later, on April 19th, when Argo was passing through Hartford he was severely beaten up by McNamara (1188–1189, 1719, 1751), the Financial Secretary of Local No. 1526 (2450), whom he had never known before (1189). The same Dr. Chambers who had refused to treat Looper on the day of the riot, declined to dress his wounds (1189). Chambers later told him that the sole cause of the affair was his previous connection with the non-union operation (1189).

After April 6th the mines were idle for ten days and filled up with water.

On April 8th a temporary injunction was obtained from Judge Trieber, the defendants being the participants in the riot, most of whom were Union men, and on April 15th some men were obtained to go down and start the pumps to clear it and prepare for further operation (John Shaleen, recalled, 3152, 3156).

From that date up to July 17th, when the properties were finally destroyed, there was a continual series of in-

sults, threats and intimidations by the Union men of the company's employees, all accompanied by profane references to "scabs."

Intimidations and assaults on unspecified dates.

Many of these occurrences were on unspecified dates. Such were the beating up of the company blacksmith (Langford, 1323), the frequent assaults on the men in coming or going from Fort Smith (Langford, 1223), the threat by Slankard, Burris and Sandy Robinson to Cheek and Dunlap to "fix the scabs" (Dunlap, 1519–1520), the attempted intimidation of J. C. Bohannon at Burma (1382, end of June or first part of July), the rocking of Epperson, Jackson and Bohannon at Midland (1382, "some time in June"), the threat by McLachlin, the District 21 Board Member in charge of the strike, against United States Marshal Holt as he was summoning witnesses to the injunction suit, which was heard May 4–8 (White, 1384), the demonstration at the Montreal crossing (White, 1384–5), insults on the train when going to Fort Smith to testify in the injunction suit (Cheek, 1432), trouble on the train coming to Prairie Creek with new employees (Allison, 1256), the threat against Sylsberry by Charley Ferguson and Jim Lee, Union miners (Goacher, 1458), statements that the mine would not be allowed to operate with scab labor (Johnson, 1510), the beating up at Hartford of a prospective employee asking the way to Fort Smith by Roy Smith, a union miner (Meeks, 1725), Smith being one of the two Union men who during this trial beat up one of plaintiff's witnesses outside Judge Elliott's Court Room and took away from him the papers which he was subpoenaed to produce (3163).

The dates of a number of similar occurrences were fixed by the witnesses.

Intimidation of J. A. Murray.

On April 28th, J. A. Murray, a company employee, when returning to No. 4 mine accompanied by J. S. Moore (the mine foreman) was held up by Union men at the switch leading to the mines, and told that they were not to go in there; that there was a bunch of "God damn scabs" in there whom they were 'going to crucify." They were turned back to Midland followed by the crowd (Murray, 1373, 1375).

Sometime prior to May 1 an investigation of the trouble was undertaken by J. C. Clary, the State Commissioner of Labor, whom the plaintiffs contended was so thoroughly prejudiced in favor of the union as to be practically a party to the conspiracy.

Clary subpoenas.

On May 1, Clary issued subpoenas to all the employees at the Bache mines, including even those who had not been at the mine on April 6, to go at once to Hartford to testify before him. He would not permit them to go a few at a time, leaving a part to protect the property, but insisted that they must all go at once (J. Shaleen, 1779–1780).

The men all felt that if they went to Hartford their lives would be in danger. Shaleen, the foreman in charge, got in communication with Mr. Cameron, who ordered him to draw the fires and come up to Fort Smith at once, which he did, taking all the men employed there, and leaving the mine to fill with water (Sylsberry, 1201, Bailey, 1359, J. Shaleen, 1779–1780).

The mines remained closed again until May 11, undoing all the work toward unwatering the mines which had been accomplished, between April 16 and May 1.

The Union thus effectually postponed the hoisting of coal.

The hearing on the permanent injunction was held before Judge Youmans at Fort Smith on May 4 to May 8.

Hearing on permanent injunction.

These injunction proceedings as well as the contempt proceedings which followed were all conducted by the Union, which paid all the expenses for counsel, witnesses and costs, amounting to upwards of $10,000 (2468; see *infra* pp. 158–160 hereof).

During this hearing there were several minor encounters between the Union men and the company employees (Allison, 1256–1257).

Charlie Robinson's threat to Caldwell.

On the 5th of May, during the injunction hearing, Charlie Robinson, one of the defendants in the injunction proceedings, and a Local Union Secretary (1369) told Caldwell, one of the company employees who was there as a witness, **that there would be no danger until the com-**

pany began hoisting coal, but after that the place would be torn up and he had better not be there. Robinson said:—

> "You had better be down in Mexico in the army, you will be safer than in Prairie Creek" * * * **"you know what they done in Colorado, the same thing will be done here"** (Caldwell, 1369–1370).

On May 16 C. H. Langford, the superintendent who later succeeded Cameron after the latter's resignation, was taking 7 or 8 new employees down to the mine.

Langford train trouble May 16th.

A union miner named Stanfield began to abuse the men, particularly one Tipton, calling them "scabs" and brought a number of other union men into the car to join in the abuse (Langford, 1318, 1319–1320, Johnson, 1501–1502).

When the party got off at Prairie Creek there were 75 or 100 Unionists there to greet them, a number of rocks were thrown at the party, one of which narrowing missed Langford. As they were leaving, a little girl named Johnson shouted at Tipton something about "scab pen," and Tipton merely answered "Yah, yah." Langford told him to "shut up" (1319–1320).

Bailey was not in Langford's party but was at the mine a mile or so away (Langford, 1320, Bailey, 1358).

Arrest of Bailey on false charge.

On May 18, however, Bailey was arrested and taken to Midland on the charge of insulting a girl on the highway, the charge being based on the above incident and the informant being the Johnson girls' brother, Charlie or Blue Johnson, an active member of the Union, who had a grudge against Bailey for some previous activity on Bailey's part in besting the Union down in Johnson County, in the course of which Pete Stewart, President of District 21 had been beaten up at the hands of Bailey and some other non-union employees (Langford, 1319–1320, 1327, 1329; Shaleen, 3153–3154; Miss Johnson, 2591).

Failure to prosecute him.

Bailey was fined $100 and costs at Midland, and an appeal was taken to Greenwood, from where a change of

venue was obtained to Fort Smith, where the case was dropped by the Union (1358).

Rock throwing at Midland May 18th.

On May 18, Charlie Cheek, Levi Brown and Will Bohannon, company employees, went down to Midland in the company's wagon to get supplies. As they started back, Moro Colo and Foster Bean, two Union Men, with a crowd of other union members and sympathizers, began throwing rocks at them

Constable Philpot of Midland, City Marshal Madge Hulsey, and deputy City Marshal Marion Hulsey were standing nearby, within sight of the occurrence.

As the Union men began to gather up the rocks the officers walked around behind the store out of sight (Tharel, 1709). When the rocks began flying, some of the supplies got loose on the wagon, and the Company men got down to fasten them up. Bohannon had a gun on the wagon and took it down and placed it up against the wheel. At this one of the Union men shouted, "they have got guns" whereupon the officers came out again and arrested the three Company employees on the charge of carrying concealed weapons.

Failure by local peace officers to make arrests.

Neither Colo, Bean nor any of the other Union rock throwers were arrested (J. W. Baker, 1423, Cheek, 1429, Womack, 1450, Levi Brown, 1533–1534, Tharel, 1708–1709, Bohannon, 1825).

The three Company employees were taken to the Mayor's office where they were told by their captors that the latter "Would try their shoes that night and make us leave town; they would kick us out of town" (Brown, 1535).

The next day they were tried and fined $100 each for disturbing the peace and brandishing guns (1535), the facts showing, however, adsolutely no violation of Section 1739 of Kirby & Castle's Digest.

Prosecution by Paul Little.

The prosecution was conducted by Paul Little, County District Attorney, to whom reference will hereafter be made. In opening the case, he stated in open court that there "was not much to the case; that the union had laid their shovels down and the scabs had taken

them up and taken bread and meat out of the union men's wives' and children's mouths" (Bohannon, 1825).

Convention of District 21 at Fort Smith May 18th-23d.

During the week May 18–23 there was held at Fort Smith a Convention of the District Branch No. 21 of the U. M. W. A., which was attended by delegates from all the Locals as well as by International President John P. White, and the District Officers. Later on more will be said of the proceedings of this Convention, it being merely mentioned here to point out its chronological relation to the local events.

Threat to Murray May 23d.

On May 23d, J. A. Murray was told by Dan Wilcox, President of the Local Union at Adamson, Oklahoma, that the miners of Oklahoma were going to "march down and help out at Prairie Creek and clean those scabs out that was working there" (1374).

Pete Stewart's speech at Midland May 25th.

On May 25th Pete Stewart, President of District 21, accompanied by Paul Little, District Attorney, made a speech in front of Magee's drug store at Midland, in which he stated that the non-union employees, including particularly Bailey (who had beaten him up previously at Jamestown, 1496), were insulting their women and girls (1312), on the public highway (1711); that they were going to have another Colorado down there (1494); that any man that wanted a gun could get one next week (1711); that it was no secret that everybody went armed and that everybody who wanted arms could get them (1313); that he was taking the responsibility on hinself with regard to the guns, and he would advise everybody else to carry one (1711); that he would furnish all the guns they needed (1494); that the scabs would be put out of there (1457), and that he would die before he would see No. 4 Mine run on an open shop basis (1496, 1711).

Purchase of arms and ammunition by Union June 15th-July 1st.

Plaintiffs were able to prove that between the middle of June and the 1st of July, Fred Holt, Secretary-Treasurer of District 21, purchased from the Remington Arms Company and from dealers at Hartford and Fort Smith 27 high-power auto-loading rifles, 28 old Springfield rifles, and many thousand cartridges for the same,

which were paid for by Union checks counter-signed by Pete Stewart, and were shipped to John Mastell and Oscar Layton, a prominent Local Union member, who later was sentenced to six months in jail on his own plea of guilty on account of this very occurrence (2482–2483, 1594–1625, 1651–1659, 1686–1690, 1690–1697, 1835–1837).

How many more guns and rifles were acquired by the Union and distributed to the Union men for use in the battle, it is impossible to estimate. Certainly there were several hundred.

Pete Setwart's statement to Marshal Johnson.

Sometime about the latter part of May, Pete Stewart, President of District 21, got into conversation on the train between Greenwood and Hartford with United States Deputy Marshal J. O. Johnson, deputized by Marshal Mayes to investigate the Prairie Creek trouble. Stewart told him who he was and Johnson said something about an injunction. Stewart then said:

"Damn the injunction."

> **" 'Damn the injunction, the national government is against us but the people are with us, and we are going to win.'** I says: 'The Company is going to operate their mines with non-union labor ain't they?' 'No,' he says, 'we do not aim to let them do it.' I said 'how would he prevent it?' I meant by that, the people, the Union. * * * He says: 'we have got a way, **we are not going to let them dig coal,—the scabs.'** He would not tell me the way. All his talk was in the way to refuse non-union laborers" (J. O. Johnson, 1499–1500).

Stewart was very bitter against open-shop labor (1500).

On June 1, the Federal Department of Justice sent 50 or 60 Marshals down to the property to enforce the injunction, but in a few days these were all withdrawn, in spite of the Company's protest, except three (Schell, 1669).

Boycott of the 50 marshals.

The Marshals were boycotted at the stores in the village and also were unable to get lodgings except in the company's own house (Schell, 1680; Chitwood, 1821–1822; W. J. Smith, 1759; Atkinson, 1764).

On June 10 several of the Company employees went down to Prairie Creek station to get some feed and groceries. A number of the union men came around cursing them and calling them "scabs" among whom were Clint Burris, Jim Slankard and Sandy Robinson, the latter of whom cut open 2 bags of feed with his pocket knife (Cheek, 1430; Dunlap, 1320; Clarence Schaleen, 1735). Cutting feed at Station June 10th.

On June 15, as Langford was bringing down several new employees, they were attacked on the train as it reached Prairie Creek by a number of Union miners who endeavored to prevent them from getting off, threatening them, calling them "scabs," assaulting one of them. Sandy Robinson, John Manick and Clint Burris were in the crowd (Langford, 1321–1322; J. Parrish, 1564–1565; Ed. Parrish, 1571; Schell, 1669–1670). Langford train trouble June 15th.

On the same day there was trouble on another train when Allison, a mine foreman, was bringing some other men down to the mines. They were searched, threatened, called vile names, and rocked by a number of union men and sympathizers, among whom, in addition to Slankard, Burris, Manick and Robinson, some other union men were identified (Allison, 1254–1256; Meeks, 1430–1431; E. Doughit, 1538; M. Doughit, 1543; Harmon, 1701; J. Shaleen, 1780; C. Shaleen, 1785). Allison trouble same day.

About June 30, Schell, one of the deputy marshals, was down at Prairie Creek station with Holt, another of the marshals. They met Bob Graham and Clint Burris on the platform and noticed a sign which had been printed up there on which was written "Remember Ludlow." Threat to Marshal Schell June 30th.

Holt asked the Union men if they figured on having any trouble and Graham said: "Yes, it will be just like Ludlow and you had better bury those God Damn rifles or" (not quoted here by reason of vile language used) (Schell, 1671).

About a week or ten days before the battle of July 17, two of the guards were sent out to guard the high-tension wire, which furnished the power to the Prairie Creek Mines and which had been short circuited or cut several times before (Cheek, 1431, 1434; Dunlap, 1520; Scowl, Cutting power wires.

1864), and where it was expected that the union men would attempt to cut it again.

Arrest of Birkell.

Several men came along and began firing at the company's camp (Hamilton, 1832). When the two guards reached the pole they found a bunch of men under it, one of whom fired at them (Dunlap, 1520, 1525). Another was captured by the guards and taken into camp (Langford, 1323, 1331; Cheek, 1431, 1434, 1439; Dunlap, 1520, 1525; Moore, 1559–1560; Schell, 1671, 1681; Chitwood, 1821–1822; Hamilton, 1832).

There was considerable promiscuous shooting into the Company property from time to time (Langford, 1325; E. Dougherty, 1298–1299).

Intimidation and boycott of persons dealing with the company.

The attempted intimidations were not confined to the employees of the Company, but were extended to those who supplied it with provisions and materials or who offered to do any casual work for it.

Thus the witness Goacher was threatened with reprisals by the Union if he continued to haul water for the Company (1458–1459).

Buck Tharel also, the one provision dealer in Midland who would sell to the Company, was threatened by identified union men (Goacher, 1457, 1458; Tharel, 1709). A few days after the battle Tharel's store was burned down (Tharel, 1710; W. J. Smith, 1759). There was also a meeting of Union men and sympathizers at Huntington to get concerted union action in an attempt to force the Huntington Light Company to shut off Bache's power supply (Scowl, 1864, see also Minute Book of Local 1526, page 226, Record, page 2449).

Union Preparations for the Battle of July 17th.

Trouble threatened when ready to hoist coal.

For some days prior to July 17th there was a distinct feeling at the mines that serious trouble was imminent (E. Thomas, 1279; E. Dougherty, 1283–1284; Cheek 1445; Mrs. Perry, 1477, 1478; Eustis, 1749; Chitwood, 1823).

As we have heretofore noted, **the Miners' object and plan did not contemplate any drastic action until the**

Company was ready to ship coal. It was this and this only that they were determined at all cost to prevent (Caldwell, 1369–1370).

On April 6th, the day of the Riot, the Company was ready to ship coal. This was effectually prevented for a month or more by driving off all the men and allowing the mines to fill with water.

The men came back on April 15th and by May 1st a good deal of the water had been pumped out. The Clary subpoenas of May 1st, however, again drove the men away and the mine filled up again. It was not until early in July that the water was all pumped out and coal began to be hoisted. On July 17th, the day of the Battle, several cars were on the scales billed for shipment to points in other states, **one at least of which interstate cars was destroyed** (Cheek 1435; S. T. Brown, 1707, Pigg, 1932; Peake, 2039–2040: Moore, 1561, 2062–2063; Finley, 2503, 3406).

Withdrawal of the Marshals.

Another circumstance which probably precipitated the final action by the Union was the withdrawal by the Government of the three United States Marshals who had been left on the property to enforce the injunction after the 50 or 60 had been taken away in June. This final withdrawal occurred on July 15th and was given wide publicity in the local press (Langford, 1326; J. Shaleen, 1784).

Threat to Shaleen.

On this day, July 15, John Shaleen, a company foreman, while waiting for a train at Prairie Creek Station, heard Pete Graham say to some other Union miners "We are going to lose a lot of our boys over this, but we can't let any scabs stay in this country" (3156).

Warning of impending attack.

The knowledge of the impending attack on the mines was not confined to the employees. It was general throughout the county (Kissinger, 1878). In Hartford it was daily expected that an attack would be made on Prairie Creek No. 4 to "run off the scabs" (McConnell, 1590; Allen, 1697; Trammel, 1575; M. W. Weston, 1855; Harp, 1898).

Warning to Dougherty.

A few days before the battle Tom McDonald, a Union miner of Hartford, and a member of Local No. 1912 (2448) made several visits to the mines in order to get out certain employees whom he had formerly known back in Tennessee.

"He said he knowed there was going to be hell played over there and he knowed me and my son. He used to play with my son Andrew and wrestle around at Briceville, Tennessee, and he didn't want us to be in that skirmish, that he expected every one to be killed" (E. Dougherty, 1293–1294, see also A. Dougherty, 1309).

Warning to Bob Bly.

Three or four days before the battle Bob Bly, a company employee, was visited by his two brothers-in-law, Jim Meeks and Arthur Cooper, union miners, who told him that they were looking for trouble "most any time —right away," and "for me to go home." This he wisely did (Bly, 1173–1174).

Warning to Upton.

On the Monday (July 13) before the battle, Upton, a company employee who was returning to the mines, was warned at Fort Smith by August Smith, a union miner, and a Lodge-fellow of Upton, that it was "just a few days before we are going to clean that place;" he was advised to stay away (Upton, 1177–1178). This warning was repeated to Upton by others as he neared his destination (Upton, 1178). When Upton still persisted in going on, the union men paid the fare of Upton and another employee to a point beyond the mines, put them up at a hotel for the night and sent them back home next day (Upton, 1179).

Warning to Weston.

In June or July, M. W. Weston was planing to operate a small union mine just across the creek from the Bache properties. He did not start his operation for a month or six weeks after he had planned, for which he gave the following explanation:—

> "A The Union people there came to me and informed me I better not do it, there was going to have trouble and we might be in the road down there, we had loaded down there on the same track.

"Q. And they said you might be in the road?

"A Might be in the road when they had this trouble and not to do it.

"Q Did they refer to any trouble that the Bache-Denman Company had had'?

"A No, sir; not at this time they didn't but simply would say that these here scabs or 'scalys' had come there and took that work and they was not going to stand for it and generally they would finish up by wanting to know what kind of work I was going to do, if I was working fair or was going to work like Bache and Denman and I would generally tell them that I didn't know anything about how Bache-Denman were working.

"Q. What did they say was going to happen over to the Bache-Denman Mines?

"A. I don't know what, **they generally coutioned me to be on the look out that this was going to come off and it was supposed to come off every day after about two or three weeks and they would notify me in the morning to kind of be on the look out and they would let us know in time to get our teams and men away but they didn't want to hurt us.** I was going to work union men there and they always cautioned me to be sure to do that I knew what had happened to Bache Denman that was referring to the whipping Looper and them fellows down there. Well, this went on that way day by day. Well, of course, I would hear it was going to happen to-night when the miners come out of the mine and then something would happen and then it was going to happen in the morning, just as the miners were getting ready down in the mine, that the (scabs) miners Bache and Denman miners" (M. W. Weston, 1847).

* * * "Well, I wasn't a bit afraid of them hurting me if they knew who it was or any of my family" (1852). * * *

"They promised to let us know when it came off so as to get us out of the way" (1853).

Frank Scofield the Secretary-Treasurer of the Prairie Creek Local, was the principal Union official who gave this warning (1854).

The first time Weston met Scofield after the battle, Scofield apologized for not giving more adequate warning of the actual occurrence, stating that some of his men started the affair sooner than he had expected and "he had no show to go down and he supposed we would hear it anyway" (1854–1855).

"We had been there about three or four weeks waiting for this war to be settled for it was supposed to come off every day and night for about three weeks, I think" (1855).

As a matter of fact, Weston himself was out of town on the night of July 16, but his family was warned away and got out of danger by the union men early in the morning of the battle (J. Weston, 1857, 1859–1860; Mack Weston, 1867, 1868, 1871).

McLachlin's telephone to Judge Youmans.

In view of this occurrence it is instructive to note that on the evening of July 16, Wm. McLachlin, the District Board member in charge of the Prairie Creek strike, himself called Judge Youmans on the telephone from Hartford and asked the Judge to instruct the United States Marshals to protect the community from the outrages of the company employees lest the latter precipitate a popular outbreak (Judge Youmans, 1815).

If McLachlin had looked out the window of the Hotel from where he was telephoning, he could have seen, as the honest old proprietor of the hotel saw, his fellow Unionists running down the street crying out "the scabs are coming" (McConnell, 1591), and could have seen companies and brigades of them marching armed to Prairie Creek to destroy the mines.

McLachlin did not call on the sheriff as Judge Youmans told him to do (1815, 2735), although he knew that the sheriff and all other local officers were only too willing to do the bidding of the Union and would give instant relief if appealed to.

McLachlin's appeal to Judge Youmans was clearly

but a part of the well conceived scheme to prepare the Union alibi.

Warning to residents in the neighborhood.

Other residents of Frogtown, the village about half a mile from the Prairie Creek mines where many of the Union miners lived, were warned by Union men early in the morning of July 17th to move away out of danger (Rankin, 1765; S. T. Brown, 1700; Mrs. Degen, 1409; Stanley, 1551).

Emigration of families of the Union men.

Many of the defendants' witnesses frankly acknowledged that they had heard, some days before July 17th, that "there would be trouble." This was particularly the case with the families and friends of the ring-leaders. Thus the family of Will and Charlie (Blue) Johnson were sent early on the morning of July 17th, to a neighbors across the mountain (Elberta Johnson, 2588, 2590–2591; Mrs. Sam Dorman, 2602–2603). The family of John Manick was moved to Hartford on the 16th and stayed until the 18th (Mary Manick, 2614). Mrs. John Bumpas, wife of one of the defendants to the injunction suit who participated in the Riot of April 6th, and one of those against whom the Court below sustained the judgment obtained by Looper for assaulting him in the course thereof, was also moved across the mountain two or three miles from the scene of the battle (Mrs. Bumpas, 2640), a man having come to the gate on the night of the 16th and warned them that there "was going to be trouble" (Bumpas, 2683–2687). Several days before the battle Cliff Sloan moved his family to Howe, Okla., where they remained until after it was over (Sloan, 2666). Ed. Ables, the father of a Frogtown Union miner (2669), the Hobbs family (two sons Union miners of Frogtown) moved to Hartford on the afternoon of the 16th (Mrs. Hobbs, 2694), as did Mrs. Ashley, daughter of another Frogtown unionist (2697), and the family of Pete Graham (Mrs. Graham, 2710). The family of Peter Nickolle journeyed to Hartford and back every night from Monday until Friday, when the

battle finally came off (2716) (see also Haley, 2795; Evans, 2812).

Visit to storekeepers.

As on April 6th, merchants of Hartford were visited by Committees of the Union and requested to close their stores on July 17th and go out to take part in the battle (Harp, 1897, 1898, 1899; Womack, 1451, 1453, 1454 1455; Tharel, 1710).

Arrangements were made by the Union to get all the Union miners from the surrounding country to come over to help (Green, 1585; Goacher, 1458; Degen, 1409; W. F. Meeks, 1730).

Purchase of arms and ammunition.

Thorough preparations had been made by the Union to secure and distribute arms and ammunition to the Union men. 55 high-power rifles and 8830 rounds of ammunition were shown to have been bought by Holt and Stewart **and paid for with Union checks** signed by Holt as Treasurer and countersigned by Stewart as President (Reierson, 1594; Hill, 1651; Laws, 1686; Morgan, 1690, 1691, 1695; Hayden, 1835–1837). How much more the Union bought and distributed among its members it is impossible to tell.

Plaintiffs-in-error seek to minimize the importance of this testimony by referring to the testimony of one of the District Board members to the effect that Stewart frequently signed blank checks (2747). **Stewart himself, however, was in the court room during practically the entire trial and neither he nor Holt were called as witnesses by the defendants** (3148–3149).

The circumstances under which these rifles were purchased by Holt showed clearly that he knew he was doing wrong. He insisted that the jobber have the shipments made direct from the factory in unmarked boxes (Morgan, 1691–1692–1693). The Remington Arms Co. representative clearly recognized also that the guns were being acquired for no proper purpose. His letter to the home office is instructive (1607):—

"Remington Arms—Union Metallic Cartridge Co.

"Mc ALESTER, OKLA., June 19, 1914.

"*Rem.—U. M. C. Co., 299 Broadway, New York, N. Y.*

"GENTLEMEN:—You will notice on my expense account for this week that I have entered entertainment expense while at headquarters on Wed. and Saturday but this expense was absolutely necessary inasmuch as I was compelled to entertain the Superintendent of the Federation of Labor of this district. The Auto. Rifles sold this week were for the Federation of Labor and this transaction must be kept absolutely secret as in case these operators in this coal field were to find that I had sold rifles to the miners they would cut me off their list when it came time to stock their stores.

"It is only a question of time until this section will be under martial law and would suggest that you acknowledge receipt of no orders in this territory for at least sixty days. **Will see that both sides are supplied with Rem. U. M. C. products but do not want to be caught in the deal.**

"Yours very truly,

"H. B. HILL."

As was shown conclusively by the order which accompanied the letter and by the testimony of the witnesses (see Morgan, 1690–1695), the "Federation of Labor" was the United Mine Workers of America, and its "Superintendent," whom Hill entertained, was Fred Holt, its Secretary-Treasurer (1614, 1615).

Defendants called a witness who testified that he saw some boxes which had been returned to McAlester before the battle, marked firearms **but he did not see any guns in the boxes** (3016).

Collection of arms.

McNamara himself spent a considerable part of the night of July 16th securing arms and ammunition from

the local stores (W. F. Meeks, 1726–1727–1728, 1733; Cole, 1752; Allen, 1698; Forrester, 1403–1404; Kissinger, 1875–1876). The miners about Huntingdon were "coming from all directions, going to town to hunt ammunition to get ready for the fight" (Degen, 1409).

Telephone messages were received at Hartford requesting men and ammunition to go out to No. 4 (Meeks, 1730).

The witness Goacher testified that he hired a mule to three Union men to work in a buggy with a horse "to go around and see some of the miners, to see if they would carry guns out" (1458).

On the morning of July 17th ammunition was carried out from Midland in sacks on horseback (W. J. Smith, 1758; M. Smith, 1761), and later was identified being distributed to the Union men in the thick of the battle (E. Thomas, 1268; Mrs. Perry, 1480–1481; W. Thomas, 1337; see also Parrish, 1566).

Frogtown propaganda.

One of the important items in the preparation for July 17th on the part of the Union consisted in the elaborate propaganda carried on by them for several weeks which finally had the apparent effect of convincing certain members of the community that the non-union employees and guards in the Bache property were really a menace to the neighborhood.

On Sunday night, July 12th, this propaganda was brought to a climax by Slankard, who, with another Union man named Cluck, crawled up a ravine adjoining Frogtown, the village where most of the Prairie Creek Union miners lived, and fired off a number of shots; "we knowed it had to be done to protect ourselves" (Goacher, 1460).

Although Slankard was present at the trial, he was not called to deny this (3149).

Cluck denied it saying that he had a sore hand at the time which would not have enabled him to hold a gun. In spite of this, however, he seems to have been able to write to the United Mine Workers Journal a day or two

later and tell of the shooting, blaming it on the "scabs". (Rec. 1462; see *infra* p. 000 of this Brief.)

During the next few days this incident was magnified (Allison, 1260; Langford, 1325; White, 1388–1389; Cheek, 1442, 1444), so that not only in Frogtown but also in Huntingdon (Degen, 1408, 1412) and Hartford (McLachlin, 2740), there were persistent rumors that the scabs were coming over to shoot up the town. The miners even went so far as to place guards not only in Frogtown (Haley, 2796) but in Hartford itself (McLachlin, 2740) to protect the 2500 people there against the few dozen men at the Bache mines (White, 1388–1389; Meeks, 1733), who were really afraid for their lives if they left the property (E. Thomas, 1279; E. Dougherty, 1283–4), and who could not be induced to go to Hartford even under the express protection of the local police force (Sylsberry, 1291; Bailey, 1359; J. Shaleen, 1779–1780).

The merchants of Hartford were not misled by the rumors and had no real fear of an attack by the "scabs" (Womack, 1453; Tyler, 1548; McConnell, 1591, 1592).

McConnell, the old hotelkeeper at Hartford, showed up the whole plot clearly (1591):—

> "Q. Now, about eight or nine o'clock before the battle, the night before the battle, state what occurred if anything, that you saw, with reference to any men rushing down the streets?
>
> "A. There was about a half dozen or more that were put out as guards that evening, and just a little bit after dark, I don't recollect just exactly the hour, but I had not gone to bed yet, but some of the guests had, there were about fifteen or twenty ran down the street toward the depot, and hollered, 'There goes some scabs,' and they run on down about the track, and there were two or three shots fired, and I heard them. I was right at the front door on the sidewalk, and it seemed like they were shooting promiscuously, just any way, and I said to some of them, 'You had better be careful, you

will kill somebody unexpectedly the first thing you know.'

"Q. Mr. McConnell, you as a business man of Hartford and a resident there and a property owner there, did you have any apprehension lest twenty-five or thirty of the non-union men at Prairie Creek were coming there and going to burn up Hartford?

"A. **No, sir; I didn't hear anything of it, or didn't feel fearful of anything of the kind."**

There was no attempt on the part of the defense to refute McConnell's testimony.

The testimony clearly showed that the company men did not do the shooting at Frogtown (1181, 1222, 1260, 1278–9, 1284, 1298, 1325, 1360, 1432–3, 1441, 1521, 1557, 1566, 1672, 1677, 1679, 1705, 1732, 1750, 1815), but they expected to be accused of it (Cheek, 1444).

On the night of July 16th the streets of Hartford, Midland and Huntingdon were unusually crowded, there being many men with guns (W. F. Meeks, 1726; Cole, 1752; Womack, 1454).

Placing of Union forces on night of July 16th.

The witness P. Baker testified that on the night of July 16th, he was returning from Fort Smith to his home at Hartford. As he approached Frogtown he was stopped several times by crowds of men with guns, one of whom he recognized as Sandy Robinson. They gave him a "password" to get by. As he went toward Hartford the road was lined with men. He was again stopped by a large crowd, one of whom got on the running board, raised his hat up and recognized him, "gave the order to open ranks, and they separated and I drove on through" (1778).

This man he recognized as James McNamara, Financial Secretary of Local 1526 (2450), afterward sentenced on his own plea of guilty to two years in the penitentiary as the ring-leader of the miners (1779, 2482).

Union meetings prior to the battle.

Three meetings were held at Hartford preparatory to the battle. The first was at the Eagle's Hall, which was attended by Pete Stewart, President of District 21, Mell Dodd, Paul Little, the county prosecutor, and by the

Editor of the Hartford "Observer," a rabidly pro-Union newspaper. The exact date is not stated.

Stewart's speech.

Dodd made a speech about "sooner or later we would be getting justice."

Stewart, too, spoke, referring to the union men and their wives and children being run over by the scabs and shot and chased around, stating that if the Company men were to be allowed to carry guns and ammunition, he would see that his men were protected by letting them have the same, and that the union people were not going to be treated as in Colorado (W. F. Meeks, 1725–1726, 1735).

Meeting at Bolen Pond.

On July 16th, two meetings of miners were held at Hartford, one at the Bolen pond, at which Slankard was the sole speaker, the object of the meeting "to get those non-union men out of No. 4," and the gist of his speech being that "he would lead the way to put a stop to those men coming into town and causing trouble shooting" (Simmons, 1909).

Throughout the entire trial there was offered absolutely no substantial evidence that any one of the company employees had ever been found shooting at anyone or making any real disturbance, either in their own camp or out of it, nor were any of them ever apprehended for or even charged with such by the assiduous local authorities, who were so eager to arrest them on false and silly charges.

On one occasion one of the men accidentally discharged a gun in the company property, injuring one of his fellows. This was promptly investigated by Paul Little, the District Prosecutor, accompanied by Pete Stewart, President of District 21 (Dunlap, 1522, 1523).

Meeting at the ball park.

A third preparatory meeting of miners at Hartford was held at the Ball Park, the men having been called out of the mines at noon to attend it. McNamara presided. "He said we knew the nature of the meeting; we all understood what we were going there for when we went" (York, 1882).

McNamara's "warm" Union speech.

"Every one seemed to understand it, because they

had been talking among themselves about the trouble, and of course it was understood that they were going to do what was best to do. I suppose that some of the union men wanted to go down there and do what they did, later on" (York, 1883).

A "warm" speech was made by McNamara:—

> "Q. I wish you would explain if you can—I don't want to lead you—the substance of Mr. McNamara's speech, as near as you can give it, explaining what you mean by it being a warm speech.
>
> "A. **He is a pretty warm member of the United Mine Workers, is all I can tell you. He believes his way good and strong"** (Simmons, 1911).

Other speeches.

Speeches were also made by Charlie Robinson (Sandy's father and Secretary of the Prairie Creek Local, Caldwell, 1369–1370), who was "quite radical"; "I would judge that he wanted to go down there and clean up on them" (York, 1883, 1884).

Robinson's speech was "all the same substance" with McNamara's, "that is, put them to flight."

> "He meant to clean them up; that is what he meant.
>
> "Q. Clean up whom?
>
> "A. What he called the scabs" (Harp, 1900).

Stewart's phone call to disperse.

After the meeting had progressed thus far, McNamara was called to the telephone, and on his return reported that Pete Stewart had given orders that the meeting should be dispersed at once (Stroupe, 1895); that there were some men in jail at that time at Fort Smith and the authorities were only waiting to get some more evidence against the men (York, 1884).

The meeting then dispersed, **not that the activities planned were to be in any way modified, but solely to prevent the Federal authorities from securing more evidence against the Union in connection with the contempt proceedings then pending.**

Another meeting was held at Huntingdon for the purpose of endeavoring, by means of a boycott, to induce the Huntingdon Power Company to shut off the power and light at the Bache mines (Scowl, 1865–1866; see also resolution of Local No. 1526, Record, page 2449). Meeting at Huntingdon.

Finally, on the night of July 16th a Union meeting of several hundred men was held at Frogtown, the talk at which was "about going over there and getting them men out of that place. Q. What place was that? A. No. 4." (Francis, 1545, 1546.) Meeting at Frogtown.

No testimony was offered by the defense to dispute that these meetings were held or the purpose for which they were held.

On July 17th all the neighboring union mines were closed from lack of available men, **although the operators were all anxious to have them work** (E. P. Bohannon, 1421, Boring, 1743, Castel, 1826, Van Hecke, 1829, Sampson, 2570). Closing of Union mines.

The absolute unanimity of action on the part of these thousands of Union miners, in simultaneously quitting work without excuse or reason to their employers, is conclusive proof of a previous agreement among themselves to go on this day to Prairie Creek and do what they did there.

On July 17th they reported for duty, not to their employers who had a right to expect them, and not with their picks and shovels, **but to their Union, on the hills around Prairie Creek, with rifles and shotguns.**

Crowds of armed men were seen going to Prairie Creek from Hartford (Allen 1697, York, 1887, Womack, 1451, recognized Ernest Nein) from Midland (W. J. Smith, 1758, S. Smith, 1759, M. Smith, 1761), and Huntingdon, among whom McNamara was recognized (Allen, 1697), McNamara was also recognized returning with a gun later in the morning (Cole, 1752). Crowds of armed men.

The Battle of July 17th.

Cutting of electric wires.

About midnight on the night of the 16th all the lights at the mine went out (Allison, 1257, E. Dougherty, 1285, A. Dougherty, 1303, Suttles, 1464, Dunlap, 1522, S. Thomas, 1660, Epperson, 1715, Eustis, 1748). At the same time, "the whistles all around through Huntingdon, all the whistles you could hear was all blowing, and there was quite a disturbance throughout the country" (Schell, 1673).

4 A. M attack.

At about 4 A. M., several bunches of men came along the road (Suttles, 1465) from Huntingdon (Schell, 1673, Epperson, 1715-1716, S. Thomas, 1660), and fired about 100 shots into the Company's property (Allison, 1257, E. Thomas, 1263, A. Dougherty, 1303, Mrs. Perry, 1477, Dunlap, 1522, E. Dougherty, 1539, Harmon, 1702, J. J. Johnson, 1807, Westton, 1868), one of the shots knocking a window out of the office building and another going through the bib of the overalls of one of the men on guard (Suttles, 1465, W. Thomas, 1334, 1345-6).

Bud Eustis, the Company foreman, went out with two men and picked up 66 shells, Winchesters, 32s, and some shot gun shells (Eustis, 1749).

7 A. M. general attack.

Things were then comparatively quiet until after seven o'clock when the train arrived from Hartford (E. Dougherty, 1539).

The Company men then noticed unusual activity over in Frogtown, hand cars going in and out on the railroad track and boxes and other things which they did not recognize, being unloaded, "suggesting trouble" (Parrish, 1566).

They then saw a dozen or fifteen men armed with guns crossing the woods from Frogtown toward No. 3 tipple, "trying to conceal themselves by going from one tree to another" (Parrish, 1566).

These men shortly began shooting into the Company's camps and in a few minutes the firing started from all sides (Parrish, 1567).

Many of the witnesses described the shooting (Allison, 1257-8, E. Thomas, 1264-5, E. Dougherty, 1285-6, 1287,

1298-9, A. Dougherty, 1304, W. Thomas, 1334, 1347, Davis, 1376, 1380, Saunders, 1393, Suttles, 1465, Mrs. Perry, 1478, 1479, 1480, 1486, 1488, 1493, Dunlap, 1522, Levi Brown, 1531, S. Thomas, 1661, Schell, 1673-4-5, Allen, 1698, 1699, Harmon, 1703, Epperson, 1716-7, J. J. Johnson, 1808-9).

The miners had evidently surrounded the camp before they opened fire, as the shots came from every direction (Parrish, 1567), and it was impossible to estimate their number. There were several hundred men firing in on the camp (Allen, 1698, Meeks, 1414), and "the bullets bounced all around us" (Mrs. Perry, 1478, 1486).

Capture of No. 3.

The Union men soon captured No. 3 tipple, from which the Company men beat an early retreat (Parrish, 1567). The Union men put a case and a half of dynamite into the slope at No. 3 and "blew it to hell" (E. Dougherty, 1292) the concussion being heard for a great distance around (E. Thomas, 1279, E. Dougherty, 1286, A. Dougherty, 1305, W. Thomas, 1336, Meeks, 1415, Scheel, 1674, Simmons, 1906), sounding "like the whole earth was falling in" (Mrs. Perry, 1479). It was clearly felt in No. 4 shaft which was connected underground with the No. 3 slope (Parrish, 1568).

Description of the battle.

The battle which followed is also described fully by a number of other witnesses from many different points of observation (J. Meeks, 1413, Cole, 1752, Stroupe, 1890, Harp, 1906, M. W. Weston, 1848-9, J. Weston, 1856-7, Simmons, 1904). These latter witnesses although called by plaintiffs, were union men or sympathizers. None of them admitted their direct participation in the battle. None suggested the "intolerable conditions created by the company guards" as the reason for the attack.

For perhaps the fullest and most accurate description of the Battle, the Court is referred to the testimony of Sam Thomas (1659), E. Dougherty (1280), Levi Brown (1527), and Mrs. Perry (1476).

The Company men sought shelter behind the cars (Levi Brown, 1531), and replied to the Union fire as well as their scanty number would permit. Many of the women and

children were moved in between the boilers (Epperson, 1716-1717).

As the Union men "closed in" (S. T. Brown, 1700), a number of the Company men fled at once (Saunders, 1393-4, 1396, 1399, Suttles, 1466, 1467).

One of these, Saunders, ran into two Union men with guns who asked him how the Company was "fixed for fighting," if they had any guns and what kind, and "if they had any pits dug" (Saunders, 1395).

Before Suttles left he saw a man setting fire to a house between No. 3 and No. 4 (Suttles, 1465, 1466-1467).

Burning of buildings.

Those who remained, while still on the property or when leaving saw about everything inflammable burnt up by the invaders (E. Thomas, 1266, A. Dougherty, 1306, W. Thomas, 1337, 1344, E. Bohannan, 1421, Mrs. Perry, 1479, 1488, Parrish, 1568, Shell, 1674, 1675, Epperson, 1717, Eustis, 1750).

"Set the son-of-a-bitch on fire," "Burn her, burn her," Harmon heard the Union men shout as he left No. 4 at about noon "and by the time we were going out of the trees we saw the tipple afire clear to the bottom" (Harmon, 1703).

The witnesses other than the Company men also described many fires on the property during the day, both in the morning (Meeks, 1415; S. T. Brown, 1700), and later in the day after the Company men had all left.

Argo's house (Stroupe, 1893), Mammoth Vein Tipple and houses (Dalton, 1773; Stroupe, 1899; Harp, 1906), were burned to the ground, **as were also a number of loaded cars standing on the railroad track at No. 4 tipple (M. Weston, 1869).**

Burning of loaded cars.

One at least of these cars was already consigned by railroad bill of lading to Natchitoches, Louisiana (1932, 2039, 2062, 3406).

Weston also described vividly the scene on the next day, July 18, when John Manick, Clint Burris and number of other men burned up No. 4 power house, throwing tents, suitcases, bedding and everything they could get hold of on the fire (Mack Weston, 1869-1870-1871, see also M.

W. Weston, 1850). Frank Schofield, Secretary of the Prairie Creek local, told John Weston that he got shot in the leg during the fight (J. Weston, 1859).

Buster Moore's party.

Buster Moore, mine foreman, and some 30 other employees left about the noon, seeing smoke rising from No. 4 as they went away (Roberts, 1555; Moore, 1559; Epperson, 1717; Eustis, 1750).

Allison's party.

Dunlap and Bud Porter left about the same time (1522). Allison, with Schell and quite a few men left after Moore's party had gone.

As they got away, about 50 union men came out of the brush. Allison's crowd lied to them about their former connection with the mines, but the union men evidently did not believe them, and one said to one of the party, "You wanted a job and you came down here and you learned a lesson."

Allison endeavored to telephone at the house of a union man near the mines but was not permitted to do so (1259).

On the outskirts of Hackett they turned their guns over to Dr. King, and Schell had some difficulty in getting his back two days later (Allison, 1259; Schell, 1675, 1676).

Levi Brown.

Levi Brown with his wife and baby held up a shirt on the end of a stick and got out. They were later captured by a crowd of union men among whom he recognized Frank De Santo and Lloyd Clayburn.

One of the men punched him with a pump gun severely and finally cocked his gun to shoot him but Clayburn interfered, stopping him. They shot at him, however, as he went up the road with his wife and baby. He dodged in to the bushes, one bullet cutting a limb above his head and another striking a tree at his side (Levi Brown, 1532-1533; Saunders, 1400-1401).

As he passed the No. 3 slope he recognized John Manick, going with some burning brands in his hands toward a building that was not yet on fire (Levi Brown, 1533). John Manick was President of Local No. 1565 (2380).

G. A. Davis.

G. A. Davis was one of the last to leave, as he had hidden behind a pump in the blacksmith's shop, fixing himself up a breast work there to keep the bullets from hitting him.

"The bullets was coming through the shop mighty near like hail; and there was a bullet hit the pump and fell down right by my face" (Davis, 1376-1377).

About 1.30 seven men came into the blacksmith's shop with guns which they threw on him and made him crawl out. They told him they would not hurt him and asked where the rest had gone, and finally searched under the floor in the engine room.

"Q. What did they do then?

"A. Well, one of the fellows (and) taken some waste out of the coal car,—out of the oil box in the coal car and brung that waste up there and handed it to me and handed me a match. That was in the wash house in the corner of the shop we were at that time, and he said, 'You light that waste' and I started to strike the match and I broke the match off, and he didn't have any other match and he asked one of the other fellows if they had a match and one of the fellows handed him a match and he said it was all the match he had. And he grabbed the waste out of my hands and said, 'I will set it.' And he struck the match and set the waste and piled some old pit clothes on the waste, and the shop went up, it burned up" (Davis, 1378).

Later they took Davis over to the Union Hall, and on the way a man who had hold of him was shot in the hand by another union man who evidently took their crowd for company employees. When he reached there, he recognized Charlie Blackburn (1378, see also Meeks, 1416), a prominent union man whom the Unionists called Captain (1662).

While they were at the school house word came in that the United States Marshals were getting off the train at Midland and would be there in a few minutes. It was decided by the Union men to tell the Marshals "Just to hold their peace a little bit until they got through what

they were going to do, and they would give up to them" (Meeks, 1416).

Parrish brothers.

The Parrishes, Lee Harmon and Pat Malloy hid themselves in the brush until about 2 o'clock, when they came out and made their way toward Mansfield.

As they were leaving they heard shouting, whooping and shooting over toward the shaft and saw very large flames and smoke rise up.

After getting a short distance a man in a Ford came along and took them in, thinking they were union men, of which impression they did not undeceive him, "He said he would haul anybody but a damn scab, he didn't know who we were, he thought we had been over there to shoot up No. 4, he said he hauled four loads over there and guessed he had done his part, he took us on to town" (Harmon, 1704).

When they reached the station they sent their rifles to Fort Smith by express on the advice of the depot agent. "Who also assumed the same thing that we had been over there to help. I guess everybody from there had been over or went over there" (Harmon, 1704).

Beaten up by Union men at Mansfield.

Shortly afterwards, however, the four were found out as non-union men, and were attacked and severely beaten up by 12 or 15 men. They were rescued by the express agent (J. Parrish, 1569-1570; E. Parrish, 1571; Harmon, 1704).

They finally hired an automobile to take them to Fort Smith but the driver later lost his nerve and gave them their money back (Harmon, 1704-1705).

The Tennessee witnesses.

About a dozen of the Company's employees were miners from Tennessee, who had come on to work a short time before the battle. Three of these, Saunders, Suttles and Perry, left early in the fight. The rest of them, headed by Ewings Thomas, with the women and children, retreated shortly after the seven o'clock shooting began, back of a large bluff, where they were sheltered from the shooting (E. Thomas, 1265; E. Dougherty, 1286; A. Dougherty, 1304; William Thomas, 1335-1336; Mrs. Perry, 1479; J. J. Johnson, 1808).

Capture by Union men.

Here they stayed, with the exception of Johnson, for several hours. Johnson went back to the bunk-house to get some water and some coats, and while going was captured by a Union man to whom he disclosed the whereabouts of the Tennessee party (1809). This man soon released him and after going to the bunkhouse for his clothes and being fired on by the Union men (1809), he tied a towel around his head and went back to the bluff where he found his former captor, with another Union man, in charge of the Tennessee party.

While he had been gone the Union men had come armed with rifles to the party and threw their guns on them and made them surrender (E. Thomas, 1267; Mrs. Perry, 1480).

White handkerchiefs as Union emblem.

These men both had white handkerchiefs around their left arms, which was evidently a mark of distinction which had been adopted by the Union men to keep their men from being fired upon by their own side (E. Thomas, 1266-1267, 1269; E. Dougherty, 1288, 1291; A. Dougherty, 1308, 1310, 1305, 1306-1307; William Thomas, 1337; Mrs. Perry, 1479, 1480, 1491-1492). See also as to these white handkerchiefs, as a recognized Union emblem in Colorado in May, 1914, Record, page 643.

One of these captors was identified as H. M. Stroupe, a Union miner who was also a local preacher (E. Thomas, 1269; A. Dougherty, 1308, 1310; Mrs. Perry, 1491-1492).

"Headquarters."

The captors told them that they were going to take them to Headquarters, **which proved to be the Union Hall at Hartford** (E. Dougherty, 1288, 1291; A. Dougherty, 1305, 1306–1307

As they were leaving, one of the captors fired a shot down into the camp (Mrs. Perry, 1488).

Passing through battle line.

As they went along the ridge they passed by several hundred men shooting down into camp, all of whom had white handkerchiefs around their arms (E. Thomas, 1267, 1269; E. Dougherty, 1289; A. Dougherty, 1306-1307; W. Thomas, 1336; Mrs. Perry, 1480; 1481, 1482, 1488-1489, 1491; see also Dalton, 1773).

These handkerchiefs seemed to disappear as the party

got nearer Hartford (E. Dougherty, 1291; W. Thomas, 1342).

Distribution of Union ammunition.

As they were going along they noticed a man with sacks of ammunition on a horse going up and down the line where the men were shooting, dealing it out to them (E. Thomas, 1268; W. Thomas, 1337; Mrs. Perry, 1480-1481). This was evidently the same man that Smith and his daughter had seen starting out of Midland in the morning with two sacks of something on a horse (1758, 1761).

Experience at the spring.

The party finally stopped at a spring where they were insulted in various ways by 75 or 100 Union men with guns who congregated there (W. Thomas, 1337-1338) and where one of the party, who had on his mine clothes, was run off, leaving his wife and children with the party (E. Thomas, 1267-1268; E. Dougherty, 1289-1290; W. Thomas, 1338; Mrs. Perry, 1481; J. J. Johnson, 1809-1810).

On the way to Hartford they met many men who were going toward the mines (W. Thomas, 1338; Mrs. Perry, 1481-1482), who referred to them constantly jeeringly as "scabs."

Many of them said "There goes a lot of scabs; there go the God damned scabs; they have broke the God damn scab-nest up" (E. Dougherty, 1292).

Arrival at Hartford.

They reached Hartford at about 2 o'clock (W. Meeks, 1728-1729), and were taken to the Union Hall where they were guarded by the Union men until Sunday morning. John Conroy, the mayor of the town, then bought their tickets and sent them back to Tennessee (1269, 3309-1310, 1729, 1812). As to Conroy, see also (*infra*, pp. 155–157 of this Brief).

Union admissions.

While at the Union Hall their captors admitted to them on many occasions that the whole affair had been put through by the Union (E. Thomas, 1269; E. Dougherty, 1292, 1293, 1294, 1295, 1296, 1297).

One of the Union men, Charlie Pattie (see pages 1296-1297, 1308, 1310, for identification of Pattie and Stroupe), told Dougherty that there was not a man in Hartford but

belonged to the Union, and that they expected to "wait on Jamestown," another open-shop mine in a few days (1296); that the Union was too strong for open-shop operations to go on in this vicinity (1309; see also W. Thomas, 1339, 1340, 1341; Mrs. Perry, 1482, 1485, 1492-1493).

The Union endeavored unsuccessfully to get the men to sign statements to the effect that the company employees had started the shooting (E. Dougherty, 1292; J. J. Johnson, 1810-1812).

Tom McDonald.

One of the Union miners, Tom MacDonald, heard that the Doughertys were there and having known them back in Tennessee, came to get them and took them to his house for the night. While there he told them that he had been out to the mine several times to try to get them out before the trouble, which he knew was coming (E. Dougherty, 1294).

He said, "There was 6000 Union men that were there that came from Oklahoma and Hartford and at another station back there, I disremember what place, anyhow there was 6000 of them and they drunk since they went into their meeting over there 1300 gallons of whiskey" (E. Dougherty, 1294-1295).

"His wife was there and the two children. His wife said, 'Now Tom, look here old fellow, don't be talking that way. Mr. Dougherty might happen to be a witness,' and Tom stopped then and did not talk any more" (1295).

Mrs. Perry's return to Prairie Creek.

On Saturday Mrs. Perry, accompanied by two Union men went back to get their effects but found that most all of them had been destroyed. (E. Thomas, 1270; Mrs. Perry, 1482-1483, 1484).

On the way they were frequently stopped and lectured on Unionism (1483).

They were told that the miners expected to pay the expenses out of the Company's stores which they had captured (1484).

Capture of Sam Thomas and party.

Eight of the other employees, among whom were Sam Thomas and two Doughits, John Baskins and Earl Syls-

berry, left the property between 9 and 10 o'clock in the morning, and later were captured by some 16 Union men with Winchesters and from there taken by a roundabout way to the Prairie Creek Union Hall, otherwise known as the School House.

They were turned over to a man whom the Union men called Captain, and who was afterwards identified as Charlie Blackburn (S. Thomas, 1662).

After staying there for some time they were conducted up the hollow out of the way of the shots, where they were searched, and then taken farther to a little log cabin. While they were sitting in the log house there came a yell from outside as No. 4 was finally captured (1663).

Murder of Sylsberry and Baskins.

After a while Slankard (the Hartford constable, also committeeman from Local No. 1530 at Hartford, (2383) came into the cabin and what followed is best described by the witness, Sam Thomas (1663):—

"Q. Go ahead and tell what was said and done?

"A. He came there and he said to these men that was guarding us. 'These are my men and I am going to take them to Hartford,' and he told us to come out and line up, and I stepped out of the log cabin first—I stepped out of the door first onto the path and John Baskins stepped out right to my side and we started off, and Earl Sylsberry was the third man out of the cabin. And I heard a shot fired and John Baskins fell right at my side, and I heard another shot fired and I seen Earl Sylsberry—I turned around and seen Earl Sylsberry grab himself right there (indicating) and he just stood up and wheel around this way (indicating) until he faced the man again, and I seen the fellow shoot him and he shot him right there (indicating), and I seen him shoot him the second time, and he turned around and faced the fellow again and he fell, and the fellow walked up to him and looked at him and he used an oath in it and said, 'I guess you will not scab any more,' and he pointed the gun at him and put a bullet right through his heart. I seen the bullet hit him right there (indi-

cating). And he walked over then to Baskins and used his foot and he kicked him; he kicked Baskins laying right there, and I never seen a move out of the man after he was shot at all. And he came to me and he looked at me and said, 'How long have you been down there?' And I said, 'I have been down there a couple of days,' and he said, 'If I had known you were down there, I would have treated you the same way,' and we had a pretty stiff argument. And some one walked up to him, I didn't know him, and said something to him, and he walked on off over the hill, and I sat right down on a big rock, with Baskins laying right in front of me. There was a round rock—well, it wasn't exactly round, but it was a big rock, and I sat on that and cross my legs that way (indicating), and I sat there talking to that fellow with my coat across my lap, and this other fellow, whoever he was, came up to him, and said something to him, I didn't hear what he said, but this fellow went on up the path and over the hill, and that is the last I seen of him."

The same occurrence is described by E. Doughit (1539) and Mike Doughit (1542), who were in the captured party, and also by Fred Francis, a Union boy (1546), and Dave Stanley, Union sympathizer (1552), who were present in the crowd.

Beside Slankard, two other Union men were identified in the crowd at the shooting, B. Trout (1664) and Valentine Borrillo (1541).

Although there were a hundred or more men present, all Union members or sympathizers, no attempt was made by Slankard or any one else to prevent the murder or to apprehend the murderer.

Doubtless the reason for the murder of Sylsberry was that he was a member of the Union (1202), and hence regarded as a traitor to the cause. Both Baskins and Sylsberry were local men who would have recognized most of the participants.

Search for Baskin's body.

Baskin's brother and another man went down to the place of the murder, on Saturday, July 18th, to look for Baskins' body. After having been given a safe conduct by Tom King, District Organizer, they were turned back by Frank Schofield, Local Union Secretary, who assured them that no one had been killed and if there were he would have them hunted for (Rauser, 1713, 1754; Baskins, 1755, 1756, 1757).

Return of Sam Thomas July 19th.

On Sunday July 19th Sam Thomas went back to the log cabin with Paul Little, the prosecuting attorney, and a deputy sheriff. When they got to the scene of the murder they found that, probably as the result of Charles Baskin's visit on the day before, the cabin had been burned down and there was a large burned place where Sylsberry had lain. Thomas found a number of bones in the ruins, including part of a human jaw with teeth in it (1665-1667).

He left soon, at the suggestion of the sheriff, as a crowd began to collect.

During the battle Union guards were standing outside the fighting zone to keep non-combatants away from the trouble (Tramel, 1574; Green, 1586).

Although a number of "constables and marshalls" were identified as participants (Weeks, 1408), no arrests were ever made.

Union admissions as to battle.

In addition to the distinct admissions on the part of the Union men to the Tennessee witnesses at Hartford, a number of Union men stated to the witnesses that the destruction of the Company's property at Prairie Creek had been accomplished by the Union (Mrs. Degan, 1409; Mrs. Smith, 1760).

The next morning after the battle, McNamara himself told McConnell, who kept the hotel where he boarded in Hartford,, "that they had shot it up and run the peopleoff that was working there, and had burnt the mines up, that is, the tipple and the coal cars, I think" (McConnell, 1590).

Burning of Dallas mine July 19th.

On Sunday, July 19th, the Dallas mine was partly destroyed (Steel, 1804-1805).

Burning of Coronado, July 20th.

On Monday, July 20th, the Coronado property was

burned down (M. B. Wiltsie, 1921; M. O. Wiltsie, 1926), the fire being preceded by the usual rumors from Huntingdon that 400 non-Union scabs were coming in to capture the town (Johnson, 1928; Finney, 1932).

Plaintiffs in error make much of what they contend are the separate circumstances surrounding the burning of the Dallas and Coronado mines on July 19th and 20th from those relative to the destruction of Prairie Creek Nos. 3 and 4 and Mammoth Vein Nos. 1 and 6 on July 17th.

The injury to the Dallas mine was comparatively small, amounting to less than $3000 (1976).

It happened in the middle of the night of July 18-19 and was clearly the work of an incendiary. In view of the fact that all the company employees had been run out of the country on July 17th it was clearly the work of the conspirators.

No objection was made by the defendants to proof of the damage to the Dallas mine, on the ground that it had not been shown to have been burned as part of the conspiracy, the objection being merely because the owner of it was not engaged in interstate commerce (see pages 1804-1805, 1974-1975, 1976).

Defendants themselves introduced a witness to minimize the damage to the Dallas mine (2630-2632) and made no motion to strike out the testimony relative to it or no request to the trial Judge to charge the jury to disregard it.

They clearly recognized the question as to the destruction of the Dallas mine as part of the issue to be left to the jury and their present contention (brief of plaintiffs' in error, pages 62-65) is merely an effort of counsel to raise an error which was not regarded as such by counsel who tried the case.

The foregoing criticism is also applicable to the proof of damage as to Coronado.

No objection was made to the testimony, and no request to the trial Judge to instruct the jury to disregard it.

On the contrary defendants tried to prove that Coronado was burned by the Company in order to get $9000 insurance on property valued at $65,000 (1024).

The total practically undisputed damage proved was $780,000. If the jury included anything in their $200,000 verdict on account of the burning of Coronado they did so because they believed that defendants' witness Schmidt was not telling the truth, as was manifestly apparent from his cross-examination (2620).

The burning of the Coronado mine was also clearly the work of an incendiary who poured a bucket of oil on the tipple and ran off before he could be identified.

Although the entire force of company men had been put to flight on July 17th and had all left the country, the destruction of Coronado was preceded by the placing of union guards around Huntingdon the night before and by a rumor that the scabs were coming to raid the town.

In their effort to make an alibi for themselves the union officials thus went a step too far and furnished entirely competent evidence, by the similarity of procedure to that shown to have been used by them three days before, that the burning of Coronado was part of the Union plot.

Bache appointed Receiver, July 25th.

On July 25th Bache was appointed Receiver of the Companies.

Threatening letter to Judge Youmans.

On the 27th Judge Youmans, who then had under consideration the proceedings for contempt which had been instituted by the Government against Stewart, Holt and a number of other Union officials, received the following letter which James Crossley, a prominent member of the Frogtown Local No. 2110, and later after his release from jail a regular Union pensioner (2472) afterwards pleaded guilty to writing (1820):—

"July 27, 1914.

"*Judge Youmans.*

"DEAR SIR:—You know the acts you have decided upon. As a warning friend we caution you to be more considerate upon the administration of your

decisions. You are notified to comply with the requirements of your office. If such is not complied with very shortly there is likely to be an unexpected change between your soul and fleshy temple, and you won't know the day or time or by what means such will take place. Still we don't want to act cowardly but give you a little time to act differently. At any rate you will have a little time for future preparation for that place called Heaven. You are weighed in the balance and found wanting. There is a great change soon to happen.

"(Signed) FOREWARNED.

"This is a barking dog and if teased much longer will bite.

"(Signed) PRESIDENT OF COMMITTEE."

Re-opening of contempt proceedings.

The contempt proceedings were reopened to take additional evidence August 19th to 25th, and on September 1 Pete Stewart, Sandy Robinson, John Manick, Clint Burris, Pink Dunn, George Burnett and Frank Gripando, were sentenced to jail terms (2487-2488).

After this the Receiver was ordered to operate the mines.

Attempt to open mines in October.

An attempt was made to do so toward the end of October and another battle ensued, of which both employees (Shaleen, 1781, Atkinson, 1763) and the neighbors (M. W. Weston, 1851-1852), received due warning from the Union.

Renewed attack by the Union.

The employees were again driven off (Atkinson, 1763, 1764, J. Shaleen, 1781-1782, C. Shaleen, 1786-1787, Cole, 1830, Johnson, 1831-1832. See also Rankin 1765 for conclusive admissions that this was the work of the Union).

Rescue of prisoner from U. S. Marshal.

When a United States Marshal had arrested a participant in this affair for violating the injunction, the prisoner was taken away from the Marshal by three armed Union men and a Union sympathizer (Hamilton, 1767, 1771, Baker, 1775-1777, Jones, 1833-1835, Kessinger, 1879).

This practically ended the serious attempt at operation. In November, four troops of United States Cavalry arrived to enforce the orders of the United States Court (729), the Company then opened a few wagon mines, "pigeon holes," but the boycott and intimidations continued during January (Choate, 1647-1649, J. Shaleen, 1783, C. Shaleen, 1786, Morgan, 1788).

Forfeiture of leases.

The Company's leases were then forfeited by a petition on the part of lessors, on the ground that the Companies were insolvent, by reason of the destruction of their property, and were not in a position to be able to continue to perform the covenants in the leases (Bache, 1037-1038; Denman, 1904; Finley, 2337; Decrees of Cancellation, 2374, 2376).

The Criminal Proceedings and Pleas of Guilty.

In December the ringleaders of the Union members and officers were indicted for conspiracy to violate the laws of the United States in disobeying Judge Youmans' injunction.

Stewart, Holt, McNamara, Slankard, Burris, Manick, Layton, Crossley, Branch, Champion and Reed **all pled guilty** and on January 20th, 1915, were sentenced to pay fines aggregating $8500, **which were paid by the Union** (2471, 2484) and to serve jail sentences, ranging from two years for McNamara to ninety days for Crossley (2415–2424, 2476–2482).

Damage Proved.

The damage to the companies' property and business was divided into three heads, physical damage to plant, loss of leases, and destruction of business and good will. The witnesses did not place any specific estimate on the value of the business or good will, although facts were given from which a great loss was apparent.

The estimates by the witnesses as to the damages varied somewhat but not radically.

The damage to physical property was fixed by Mr. Denman at $246,588 (1953, 1963, 1972, 1976, 1980.)

Mr. Bache fixed the physical damage at $205,000 (2326-2327).

The loss of the leases was estimated by Mr. Denman at $502,000 (1978, 1987, 1989, 1994); by Mr. Bache at $539,000 (2326-2328).

The loss of three of the leases valued by Denman at a total of $475,000 and by Bache at a total of $485,000 was estimated by Mr. Gilman at $517,000 (2296-2297).

The loss of two of the leases fixed by Denman at $425-, 000 and Bache at $430,000 was estimated by Mr. Eyster at $420,000 (2283).

Taking an average of the estimates of the four witnesses on the items covered by each, the damage proved from the destruction of the physical property was $255,000, and from loss of the leases $525,000, or a total of $780,000.

The verdict was for $200,000, or less than the physical damage.

The estimates of the value of the leases were made on the assumption that they would have been operated under Union conditions. If the Court had been able to protect the properties from the Union and they could have operated open shop, they would have been very much more valuable, since the cost of operation would have been reduced at least 20% (Bache, 678-682, 718-719; Denman, 2036; King, 2058; Hilling, 2301).

After counsel for defendants had brought out on cross-examination that Denman's estimate of the value of the leases was based in part on the profits that could have been made by operating them, he explained on re-direct, that he had accurately figured, based on cost of production and sale price down to the date of his testimony, that during such period the companies, even under Union conditions, would have made a profit of more than $600,000.

There was no real dispute by defendants of the amount of damage done. Although they called one witness in an attempt to show that the amount of available tonnage at Coronado was exhausted, he clearly showed on cross-examination that his testimony was based on a mis-

understanding of the lines and acreage covered by the properties (Shaw, 2813).

In his argument to the jury one of defendants' counsel stated that the question was not one of damages, but of liability.

The editorial in the United Mine Workers' Journal for July 23rd, 1914, entitled "The Truth About Hartford, Arkansas" (*infra*, p. 136-138 of this Brief), estimated the damage at $200,000 (2392).

A later article in the Journal (Nov. 26th) estimated it at $500,000 (2403).

Both estimates by defendants were made before any of the leases were forfeited.

The Attempted Defense.

Defendants' evidence is further discussed later on in this Brief, in connection with Judge Elliott's supplemental instructions to the jury.

As heretofore stated, the only defense which the Union attempted to make to plaintiff's case, was that the destruction of the mines was the result of an uprising on the part of the entire country-side, caused by the alleged depredations of the non-union employees.

Exit from Frogtown.

Defendants' proof as to this made a sorry showing. A number of witnesses testified that they left Frogtown for Hartford, for fear of injury, on the night of July 16th, or a day or two before, but on cross-examination it came out clearly that they were the families of the Union participants and were being moved out of harm's way.

The little girls.

Defendants also called the two sisters of Charley (Blue) Johnson (2584, 2599), the two sisters (2578, 2592) of Ves Howard (one of the three Union committeemen who visited Cameron just before the riot), the daughter (2607) of John Mastell (to whom the guns were shipped by Holt, 1687-1688) and the sister (2610) of John Manick, President of Local Union No. 1565. These little girls were in April, 1914, aged eleven and twelve years (one thirteen). They swore that on many occasions the company employees had made indecent proposals to them. They had never

complained to their parents or brothers of this, however, or if they did, nothing was done about it in the way of having the men arrested, although officers of the peace were near at hand (2590, 2591). They further swore that it happened before school closed on April 17th, although the Company men were all run off on April 6th and, except for a few who came back to pump out the mines on April 15th, there were no Company men there until after April 17th. As this testimony proceeded, each little girl evidently tried to improve on the performance of her fellows, until finally Mary Manick capped the climax by swearing that one day in April 1914, Mr. Denman had come riding along on a red horse and had taken from his pocket and thrown at her five or six rocks, "some of them as big as your fist" (2612).

Failure to call principal participants.

As Mr. Denman was in the East continuously from December, 1913, to June, 1914 (3148, see also 2611, 2614), Mary's performance put an end to this line of testimony, and the little Burrises, Slankards and McNamaras, if any such were waiting in Court, went home without giving their testimony.

Neither Pete Stewart, nor Jim McNamara, nor Jim Slankard, nor John Manick, nor Fred Holt, nor Clint Burris, nor Sandy Robinson, nor Frank Schofield, nor Charley Blackburn, nor John Mastell, nor Oscar Layton, nor any other of the ring leaders were called to testify, although it appeared affirmatively that Stewart, Slankard, Burris, Robinson and Layton were all on hand at the trial (3148–3149).

Not one of the hundreds of participants was called by defendants, nor is there a word of direct testimony in the Record that a single participant was moved to take part in the destruction of the property because of " the intolerable conditions created in the Hartford Valley by the employees and servants of the defendants in error."

Having thus seen the circumstances and proceedings by which defendants were impregnated with the motive for destroying plaintiff's property and business, and having

reviewed the acts and declarations of the immediate participants as showing that they were in fact actuated by that purpose, we may now turn to our third subdivision, the Official Union Proceedings and Publications During the Course of and Following the Prairie Creek Strike.

3. Statements in Defendants' Official Publications and Proceedings.

On April 6th occurred the Riot which resulted in the flooding of the mines, the serious injury to several employees and the heralding of the Union victory by the placing on the tipple of the banner inscribed:—

" This is a Union Man's Country."

During the months previous to this, a suit had been started against the Operators' Association, at the instigation of Mr. Bache, to investigate the improper and secret use of Association funds for bribery of certain Union officials, including Fred Holt, the Secretary-Treasurer of District 21, in connection with the negotiation of the contracts with the Union in 1910 and 1912 (2390, 2743).

This suit was being tried at Kansas City at the time of the Riot, and there were present, as witnesses or spectators many prominent union officials, including President White of the International Union, International Executive Board Member Mullen (the Board Member for District 21) President Pete Stewart of District 21, and Messrs. McLachlin, Sparling, and Dalrymple of the District 21 Executive Board.

Whether or not these men knew of the Riot of April 6th before it came off, or just when they learned of it, does not appear from the Record, which shows only that on April 8th Stewart and Mullen (President and National Board Member for District 21) left Kansas City, where President White was, and came to Fort Smith, where they stayed for two days, and then returned to Kansas City, all on Union Business, since their expenses were paid by

the Union, Mullen's by the National Organization, and Stewart's by District 21 (2386, 2387, 2389).

The United Mine Workers' Journal is constituted by Article XIX of the International Constitution (Record, p. 449), its official organ. It is published weekly from the headquarters of the National Union by the Executive Board and under its supervision (449, 505). The Editor is appointed and is dismissible by the International President. The Constitution further requires that each Local Union must subscribe to the Journal and that the Recording Secretary of each must examine every issue and read the official communications to the members (Article XIV, Section 41).

On the front page of the issue of the Journal for April 16, 1914, there appeared the following account of the Prairie Creek Riot of April 6th (2384-2385):—

"ARKANSAS MINERS DETERMINED.

"Demand Union Conditions.

"FORT SMITH, ARK., April 7.

"Unionists today have frustrated an attempt of the officials of the Bache-Denman Coal Company's mine, at Midland, near here, to strangle their organization and operate under an 'open Shop' policy. Previous to this decision 200 union men had been employed.

"The miners met about a mile from the Mammoth Vein mine, as the mine is known, and held meetings. They were addressed by a number of speakers, including Miss Freda Hogan, daughter of Daniel Hogan, a prominent Socialist. Following the meeting the men formed in line and marched to the mine.

"Several clashes marked the efforts of the unionists to persuade the men in the mine to join them. Following a disturbance in which two guards were hurt, the miners joined the unionists and left the pit. A United States Flag was then hoisted from a nearby pole and the crowd departed.

"The company has announced its determination to inaugurate the 'open shop' policy at its six other mines in Western Arkansas and Eastern Oklahoma next fall. At present they are closed for the summer."

As we have heretofore seen (*supra*, pages 14-31 of this Brief), the International Executive Board is the highest power in the Miners' Organization except a convention of delegates. In the interim between Conventions it is practically omnipotent. This Board is composed of the International President, Vice-President and Secretary-Treasurer, *ex officio*, and of a representative from each District Branch.

The next meeting of the Board after the Riot of April 6th was on May 4th at Kansas City, at which meeting James Mullen, the Board member from District 21, was present. At this meeting President White made a report to the Board relative to the bribery charges and litigation instigated by Bache, above referred to, in the course of which he said (2390):

"PRESIDENT WHITE:—Another matter I want to mention to the Board before we adjourn. I have a few matters here I wanted to state, in order that my action might be known to the Board officially and the Board would have the information that they ought to have in a brief way. Several weeks ago, or rather, more than two months ago, I guess it was, a suit was instituted in the Southwest by a man by the name of Bach, a member of the Bach-Denman Coal Company, against the President of the Southwestern Interstate Coal Operators' Association, Charles S. Keith, in which he demanded an accounting of the funds of the Southwestern Coal Operators' Association." * * *

"Well, that was all the object this man Bach had in mind, was to procure the information."

* * * * * * * *

"When he secured this information, he immediately

went down to Arkansas and started to run his mine non-Union. **The boys simply marched in on him in a day down there and kicked his Colorado guards out of there and broke their jaws** and **PUT THE FLAG OF THE UNITED MINE WORKERS ON TOP OF THE TIPPLE** and pulled the fires out of the boilers, and that was all there was to it, **and the mines have been idle in there ever since."**

Several features of this incident are particularly significant.

President White shows entire familiarity with the circumstances connected with the Prairie Creek Strike. This and White's interest in Bache as the instigator of the Holt bribery charge are most important in connection with White's attendance at the District 21 Convention at Fort Smith two weeks later and his address to that Convention, to which we shall presently refer.

President White, in the secret councils of his Executive Board (the minutes of which are not made public, and which were obtained for the trial by plaintiffs on order of Court after a strenuous legal contest) openly approves the violent means used by the miners against the non-Union employees.

Finally White recognizes in absolutely unmistakable terms that the acts had been done by the participants **as representatives of the United Mine Workers of America,** boasting that the **United Mine Workers' Flag** had been placed on the tipple as the emblem of Union victory, and that the mines had been idle ever since.

By this statement White clearly acknowledged that it was an agency of the National Organization which had done these acts, that they were done in the name of the National Organization, and further expressly **took the benefit** of these acts for the National Organization, since he congratulated his fellow Board Members that the mines had been "idle ever since," this having been the sole purpose of the Riot from the Union standpoint, and the **benefit** which the Union was to obtain from it.

If, as contended by the defendants, the Union was opposed to violence, and if it were a fact that the riot was not planned and put through by the local officials in furtherance of the objects of the Union but was a purely local affair with which the Organization had nothing to do, it was clearly incumbent on President White, at the very next opportunity which presented itself, to repudiate those who had, without warrant or authority, assumed to represent the Union by the use of its emblem, to discourage the violent and unlawful methods used by the miners in settling their differences with Bache, and to use his utmost influence and counsel to prevent a similar occurrence.

An opportunity for such action by White presented itself almost immediately.

During the week beginning May 18, just two weeks after the May 4 Board Meeting, there was held at Fort Smith a special Convention of District 21, consisting of representatives from all the Local Unions composing the District, for the purpose of taking action on the charges of bribery against Fred Holt, the District Secretary-Treasurer, which had come out in the litigation at Kansas City, instigated by Bache, above referred to.

President White attended this convention throughout the entire week that it was in session. At it were also President Stewart of District 21 and Board Member Mullen, and also Wm. McLaughlin (or McLachlin) the District Board member who was in direct charge of the Prairie Creek Strike (2438).

It is impossible to believe that Bache's connection with the proceedings then under investigation and his troubles with the Union at Prairie Creek, only a few miles away, were not frequently discussed by those attending the convention.

McLaughlin had been sent down to Hartford by the District Board in April to handle the strike (2744). He attended the Fort Smith Convention during the whole week of May 18, during which time, as one of the principal District Officers, he must have seen and talked to White every day.

If White had really disapproved of what had been done on April 6, in the name of his organization, if he had really considered it his duty to discipline the Union participants and if he had honestly desired to prevent a recurrence of the violence, it was from McLaughlin that he would have got his information and through him that he could have given his instructions.

McLaughlin testified, however, that not once during the week did he hear White mention the Prairie Creek Strike, that he gave him no advice or instructions of any kind with regard to it, **that he never heard White express any disapprobation of anything that had happened** there whether to McLaughlun or to any one else, **that neither McLaughlin nor any other union officer took any steps whatever toward disciplining within the Union any member who had taken part in the riot,** and indeed that McLaughlin had made no investigation as a Union Officer to ascertain what part the Union Officers and members had taken in it (2744–2746).

He stated that, as a union officer, he did not consider it part of his duty to discipline union members who used violence in labor disputes as the Union Officers merely "let the law take its course" (2745).

In other words, although McLaughlin claimed to have been sent down to Hartford by his organization to keep the peace and to prevent the miners from violating the injunction, neither he, nor his superior White ever said a word or lifted a hand to express official disapproval at what had happened or to prevent its happening again, although they both knew perfectly well that a serious breach of the peace had been committed by Union members in the name of the Union and for its purposes and benefit.

White's attitude and action went, however, much farther than a mere negative. The speech which he delivered to the convention at its opening, in the light of what had occurred, and of what White and the other delegates and officers of District 21 knew, was in itself sufficient not only to stamp with the appproval of the National Organization the part which the Union had

played in the events of April 6, **but also to inflame the miners to further similar efforts in their war on open-shop operations.**

White addressed the Convention on May 18, at its opening. His entire address is found on pages 1135 to 1144 of the Record and is called to the particular attention of the Court.

After the usual formal introductory words White said:—

> "I am glad, however, and thankful, for the privilege, as well as the honor, of being with you on this occasion and saying a few words in a general way about the conditions of our organization. I have not as broad an acquaintance with the miners of District 21 as I have with some of the other districts.
>
> **"However, I have known of the value and worth of the organization of District 21 for many years. We have watched your struggles with a good deal of pride and satisfaction and have admired you for the splendid fighting qualities that you possessed."**

Was the foregoing calculated to give the hearers an impression that the National Organization in any way disapproved of what had been done during the past six weeks in the only industrial struggle in progress in District 21, done in the name of the Union and for its avowed objects and purposes, the particulars of which White knew full well? Was it in any way calculated to discourage the miners from the exhibition of further similar "splendid fighting qualities," breaking the jaws of a few more guards, intimidating and driving off by violence other non-union employees?

The address continued:—

> "I recall your early struggles for the establishment of **our union** and the splendid fight you maintained to perfectly establish our principles. * * *
>
> "Possibly at no time in the period of the United

Mine Workers have we ever been so bitterly opposed by the opposition as we have been in the last eighteen months or two years.

"This is probably due to the fact that in the great non-Union fields of this Country for many years our organization has to great extent, at least, lapsed into indifference and failed to extend its lines into these rich coal producing countries **that are of such prime importance to the organized district of the country."**

White then reviewed briefly the two-year strike in West Virginia which had recently ended, and the great strike in Colorado which was then at its height, emphasizing particularly the importance of the hoped for success in organizing Colorado for the protection of the Union in the Southwest and laying great stress on the opposition to the Union of the Government authorities and the alleged employment by the operators in their conflicts with the Union, of hired gunmen, desperadoes, criminals, murderers with guns, for the purpose of crushing out the ideals of Unionism.

These were the precise conditions which the union officials, throughout the Prairie Creek strike, by false rumors spread broadcast, both by word of mouth and by their official organ, the "United Mine Workers' Journal," sought to make not only the miners in Prairie Creek but the entire countryside believe were being employed by Bache. This was the same framed-up excuse which the Union was preparing for what it intended to bring to pass at Prairie Creek.

At the trial the plaintiff demonstrated beyond the shadow of a doubt and to the satisfaction of the jury that no such condition actually existed at Prairie Creek, and that the whole scare was an enormous hoax engineered by the Union to enlist the sympathy and co-operation of the countryside.

That McLaughlin and other District Officers knew this there can be no possible doubt. If White did not, one question and one truthful answer from Stewart or McLaughlin would have enlightened him.

His address was calculated and intended solely to fan the fire against the open-shop attempt then in progress within a few miles of where White was speaking, and to urge the miners to do more of what they had already so successfully accomplished **without, if possible, directly implicating the National Organization.**

If one in White's position and with his authority could do what he did or refrain from doing what he omitted to do during that week of May 18th, knowing what he knew, and incur no responsibility therefor on behalf of himself or his organization, then immunity by all conspirators would be easy to attain.

Such, however, is certainly not the law.

After dwelling on the enormous recent growth and power of the union,—"we now number nearly 450,000 members, easily we could influence more than 500,000," —White reached the climax of his speech, as follows:—

> "And after all this great fight and numerous sacrifices that we have made we can congratulate ourselves on the progress we have made and my sincere desire is to see our great organized districts free from industrial strife, so we may establish the union in other fields that we have referred to, **because any casual observer must know that in the strong organized districts we have about reached the end in our wage conditions unless we can bring about the organization of the unorganized fields.**
>
> **"You cannot keep this movement half slave and half free.** The fight belongs to the organized miners to make. You who have tasted of the fruits of this movement, and found out its benefits as compared with the conditions of the past, know that the great brunt of this battle must of necessity fall upon your shoulders, to free these fellow-workers in the non-union coal fields of this country."

Spoken to men who were then engaged in a struggle to keep non-union men from securing a footing in their

midst, and who, as White had boasted to his Board, had been so far successful, by the employment of violence and bloodshed, in keeping the non-union mines from shipping coal, this could mean but one thing—the emphasis of the supreme importance to the National Organization of the keeping out and stamping out of every vestige of non-unionism, and **the ratification by the National President of the methods which he knew had already been employed for this purpose against Bache in District 21.**

White's speech had the desired effect on the officers of District 21.

On the Monday after the Convention closed (May 25th) Pete Stewart made his speech in front of McGee's Drug Store in Midland, in which he promised to arm the miners with rifles and to carry a gun and die himself before the Bache mines be allowed to operate non-union (*supra*, page 89 of this Brief). His reference in this speech to the alleged horrors of Ludlow, Colorado, were clearly inspired directly by White, as the excuse for what he and his fellows planned to do unless Bache would give in.

Even more significant is Stewart's conversation at this time with Marshal Johnson on the train.

Speaking of the opposition to the Union by the Government of Colorado and the State Militia, White had bemoaned the fact that the militia had been sent in not to protect the miners, "but when the miners get the best of them he sends the militia down there to protect the vested interests."

"Damn the injunction," said President Stewart to Marshal Johnson, **"the National Government is against us but the people are with us, and we are going to win. We are not going to let them dig coal,—the scabs."** (1499–1500).

During the period from April 6th to May 25th, the miners, as we have heretofore seen, had not been idle at Prairie Creek.

On April 9th Judge Trieber had granted an injunction

against 65 Union members and sympathizers, which injunction was made permanent on May 9th.

After this, as we have heretofore seen, there was a continuous series of intimidations and assaults of company employees.

Matters did not, however, assume a sufficiently important aspect to secure notice again in the "Journal" until July 9th.

There then appeared in the United Mine Workers' Journal the following contribution by "Uncle Billy" Cluck, one of defendants' principal witnesses and, after his release from jail, a Union pensioner (2391, 3157):

"FROM ARKANSAS.

"FIGHT ON AT HARTFORD.

"HARTFORD, ARK., July 3.

"I wish to have a few words in the 'Journal' in regard to the **strike** here at No. 4, Prairie Creek, for which they are scabbing and furthermore new men are coming in from all over the country. Some think No. 4 is working under Union conditions and I wish to help strangers out so they will not come to Prairie Creek No. 4.

"The Bach & Denmon Coal Co. have wires around the shaft and tents in the bull pen in which they have about 120 scabs and new ones coming in every day. The Company has put the Union miners out of their houses so they may have more room for more scabs. The men here are in tents in the backwoods, so do not let the labor agent talk you into coming to Prairie Creek No. 4. We are out to win and we intend to do so. We have strong bunch of scabs here. We have scabs from Spadra, Ark., and U. S. gunmen who have come here from Colorado to guard the Arkansas scabs.

"W. H. CLUCK."

One of plaintiff's most impressive witnesses, Jess Goacher, whose character and reputation for truth de-

fendants vainly sought to attack, had testified that sometime after the battle of July 17th "Uncle Billy" Cluck had told him that **it was he and Jim Slankard who had really shot up Frogtown in order to bring on the battle** (1460).

In view of this testimony it is interesting to read another letter written by Cluck to the "Journal" a day or two after the shooting up took place.

In the issue of July 23d appears the following (1462):

"FROM ARKANSAS.

"THE STRIKE IS STILL ON.

"HARTFORD, ARK., July 15th.

"I want space in the 'Journal' to tell of some of the conditions existing at Prairie Creek No. 4. We had a little trouble here on Saturday night, July 12th. Some of the scabs got out of the bull-pen and started to shoot up Camp Beulah at the Mammouth Mine. There was quite a number of shots fired, but none of the miners or their families were injured. The men are firm and out to win. Everything has been quiet since Sunday night.

"Our District President and some of the boys have been on trial over an injunction.

"We are asking all men to stay away from here until this trouble is settled, as it is supposed they have agents out looking for men. Will you give the news through the 'Journal.'

"We have the regular type of scabs at this place.

"W. H. CLUCK."

In the next issue of the "Journal" after the battle, July 23d, there appeared the following authoritative account of the battle and the causes thereof, in the form of an Editorial (2392):

"THE TRUTH ABOUT HARTFORD, ARKANSAS.

"Attempts on the part of the hired army of the Bache-Denman Company, New Hartford, Ark., to

emulate the Colorado gunmen militia brought about an outbreak **on the part of the union miners,** in which the gunmen were badly worsted.

"When the Bache-Denham broke with the organization and locked out the union miners, the organization in District 21 furnished tents for the miners who were evicted from the company's houses.

"The tents were on private grounds, rented by the organization; were as much the property of the men who lived there as is the mine tipple, the offices, or any other of the buildings around the mine the property of the company.

"More than that, the tents were, and are, the only shelter these men have—the only protection for their wives and children.

"The operators recognize that these tent colonies indicate to any of the men they may bring in under false representations the fact that a strike is on. Many such men have turned back when they saw these tent homes.

"For many weeks past the private army of the operators harassed the miners and their families in their tent homes. Night after night the tents were shot into from the surrounding woods. Men and women going from the tent colony on business of their own have been waylaid and beaten. Many of the men have gone out from the camp and never returned. In fact the conditions surrounding the miners' camp indicated that a repetition of the Ludlow horror was the intent of the gunmen.

"All night Thursday the tents of the miners had been the targets of the hired thugs. **Union miners living at a distance** heard of the attack. Determined that a massacre like that of Colorado should not be perpetrated upon their friends and relatives many men marched to the rescue. The sharpshooters were dislodged and followed to their camp; shots were exchanged all the way. **The miners then determined to destroy the enemies' stronghold as a**

matter of protection for their homes, the only shelter of their families.

"We do not advocate force as an argument. We would adjust all of our differences at the council table, if the choice was ours. But when it is necessary to protect our homes, our families from the attacks of hired ruffians who do not spare, as we have learned too well, the mother or the babe, to whom murder and arson are 'all in the day's work,' **we applaud the men**—would be glad to personally aid the men who defend their homes, **even though it be necessary to follow their assailants to the shelter of the companies' buildings,** their rallying place, from which they come forth at night on their work of destruction.

"There are no arguments we can offer to the hired gunmen of the enemy. Their work is to cast the bludgeon of force into the scales of reason.

"We maintain, and those who have not been prejudiced by lying reports, and are not personally interested, will agree that the men of Arkansas had a perfect right to protect their homes and their loved ones from a like fate as that which overtook the victims of greed and violence at the Ludlow tent colony."

In the foregoing article we have not merely competent evidence, but an official acknowledgment, that the destruction of the Bache-Denman properties was accomplished by the Union in furtherance of the labor dispute then in progress between the "Organization" and the Bache-Denman Companies.

The National Organization "applauds" its members for doing what it considers their duty under the circumstances.

Whether or not investigation had been made as to the truth of the facts relied on as a justification of the Union's action does not specifically appear, but in any event the National Organ takes it on itself to vouch

for them, admitting what its representatives had done in its name, and resting solely on what it contends was ample provocation.

In other words, while the plea of the Union at the trial of this case was a denial that it or its agency had done the acts that caused the damage, its plea in July, 1914, was not a denial, but was in confession and avoidance.

The Union officially acknowledges that it was the Union that did the damage, and relies for its defense solely on the contention that it was justified in so doing.

Such is the effect in the present stage of the case of the Editorial above quoted.

While of course for the purposes of the trial it would not have the conclusive effect of a legal plea, yet it contained **a distinct and authoritative admission that the damage was done by Union members in the furtherance of a Union object—in the course of the Union's business.**

In itself this Editorial thus furnished the jury with sufficient evidence on which to resolve the issue of agency in favor of the plaintiff, and hence, at the present stage of the case, disposes of the agency question.

Plaintiffs in error seek to explain these Journal Articles on the ground that they presupposed that the Union men were actuated by provocation. This in no way detracts from the effect of the articles as an official acknowledgment that what the men did and were doing was done **on behalf of the Union** as a Union activity.

A principal who acknowledges that his agent was acting for him, **on his business,** but relies on the contention that he so acted with proper justification can no longer rely on want of authority.

When the jury found that the justification relied on was a lie and a hypocritical sham, the lack of agency defense was no longer available.

In the issue of the week following there appeared a second article in the Journal which is equally conclusive against the present position of the Union. This article we also quote in full (2396):—

"BRAVO

"ARKANSAS COAL DIGGERS.

"(By Eugene V. Debs.)

"Hats off to the Arkansas coal miners!

"They have routed the gunmen and delivered a body-blow to the government by assassination.

"For some time there has been a strike on in the Hartford Valley, where one, Franklin Bache, arbitrarily refused to deal with the union and insisted upon operating a scab concern. When the miners in his employ struck he promptly did what the operators in West Virginia and Michigan did, and what the operators in Colorado are now doing, namely, he ordered out his privately-owned and armed gunmen and assassins, a small army, equipped with high power rifles, to slaughter the miners and their wives and babes and re-enact Ludlow.

"But the miners had heard of West Virginia and Michigan and Colorado and they were not caught napping. They were not so well armed as Bache's red-light gunmen, but what they lacked in physical equipment was more than made up in moral stamina, and when the smoke of battle cleared away several gunmen were found to have bitten the dust and the rest vanished into mist and no trace of them has been found since.

"Bravo, ye coal-digging slaves of the Pits! **You have done your duty in a heroic manner and deserve the applause of all honest men. May the miners everywhere catch your brave spirit and follow your inspiring example!**

"Government by private gunmen and the massacre of honest toilers must be put an end to in the United States.

"We Socialists are for peace and we are steadfastly opposed to violence except when lawless violence is forced upon us and we are compelled to fight for our lives and in defense of our families and homes.

"In recent years the great trusts and corporations have gone entirely outside of the law to wage their lawless warfare on lawful labor unions. They have established their thug-recruiting agencies in all the large cities, through which they drag the slum to recruit their army of cutthroats and assassins.

"This private army of the corporations, an absolutely lawless gang of man-killers, is armed with machine guns and high power rifles, and when workingmen go out on strike, as they have a lawful right to do, the corporation army of private thugs is at once ordered out to shoot them down like dogs and to insult, outrage and slaughter their wives and babes, as they did in Cabin Creek, Calumet and Ludlow.

"To submit peaceably to such criminal invasion of their rights and such infamous outrages upon their manhood, workingmen must be sunk to fathomless depths of degradation and dead to every sentiment of self-respect.

"In the case down in Arkansas the scab operator, following the example set by the operators in other States, had his court injunction issued, ordered out his private army of man-killers, then sat himself snugly down in his easy-chair to wait until the miners whose labor had enriched him lay weltering in their own blood.

"But this particular operator was fooled. He got his lesson and he will not forget it. **When the battle was over his private army was annihilated and his mines and tipples, to the value of $200,000, blown up with dynamite, a mass of ruins.**

"This is the way government by gunmen and assassins should be made to react upon the criminal master class every time they put it in operation.

"Bravo, once more, Arkansas coal diggers! You have set a heroic and inspiring example to the working class of the nation.

"The corporation gunmen who massacre working-

men, murder women about to become mothers and suffocate and roast babes as they did at Ludlow, are the most detestable of degenerates and the vilest of outlaws. They are more dangerous than mad dogs and should be treated accordingly. They have absolutely no right that any honest workingman is bound to respect.

"They are private assassins and public enemies. They are the fomentors of strife, the inciters of riot and the shedders of innocent blood. They are a perpetual menace to peace and good government, and they thrive only in violence and crime.

"When these miscreants are sent out to slaughter honest men, pillage their homes and kill even the babes in their cribs it is time to take up arms against them.

"If the law under capitalism permits lawlessness and violence on the part of the corporations and their private army of thugs, and workingmen are denied the protection of the law then nothing is left for them but to defend themselves and their loved ones, and if they have not the manhood to do this, they deserve to be crushed beneath the iron heel of their despotic masters.

"Fred W. Holt, Secretary of District 21 of the United Mine Workers, testified in court that he had shipped the guns from McAlester, Okla., his home, to the miners in Arkansas 'for the purpose of enabling them to protect their wives and children against the outrages of the private armed guards.'

"All honor to Holt for having shipped the guns to the unarmed miners and for standing up in court like a man and admitting it.

"If government by gunmen is to prevail, then liberty is dead and the labor movement a farce.

"The Arkansas miners have throttled the monster and I appeal to the miners everywhere to arm themselves and prepare to do the same. They are strictly within their lawful right in arming them-

selves against lawless invasion and in defense of their homes.

"The next assessment that is levied by the United Mine Workers and the Western Federation of Miners should be levied for the raising of a gunmen defense fund for furnishing each member with a high power rifle and 500 rounds for the protection of their lawful rights, the defense of their wives and children, and for wiping out government by gunmen and assassination in the United States."

The most striking thing about the above article is its flagrant and disgusting hypocrisy.

According to the overwhelming testimony, all the rumors of the depredations by the "armed guards" and "hired gunmen" had been deliberately and effectively circulated by the Union for the sole purpose of framing up an excuse to pull off the battle of July 17th, and to get the neighborhood not only to tolerate the assault on the mines, but to take part in it.

There can be no doubt whatever that the National Officers knew this. Certainly John P. White knew it and his smug denial at the trial of knowledge of participation in the Prairie Creek affair (given before we had secured the minutes of the Board Meeting of May 4th, which effectively revealed him in his true character), is in accord with the similar professions of virtue and innocence by the other responsible officials in the Union.

If Debs did not know that the whole thing was a Union frame-up, as he probably did, certainly the editor who published the Article knew it.

It was the business of all of them to know the truth of such a matter before they gave it the official stamp of the approval of the Organization.

It is interesting to note that the amount of the damage which this Article boasts was inflicted by the Union on the companies, $200,000, is the exact amount awarded by the verdict of the jury. This was prior to the forfeiture of the leases, which constituted the largest item of damages.

The same issue of the "Journal" contained an account of the contempt proceedings pending before Judge Youmans at the time of the battle, which were reopened and resulted in the conviction and sentence of President Stewart and Secretary-Treasurer Holt shortly afterward (2394).

The issue of August 6, contains a notice by the Secretary of one of the Locals near Hartford of the expulsion of one of its members for "guarding scabs for the Bache-Denman Company at Prairie Creek during the recent trouble at that place" (2399).

During the fall of 1914 the "Journal" contained other articles describing the situation at Prairie Creek and giving further accounts of the history of the strike and of the battle of July 17, all reiterating as the sole justification urged by the Union, the illegal activities by the non-union men which forced the miners in "self-defense" to take the offensive (2400-2408).

The whole attitude of the Union in this case is so similar to that of the Prussians in connection with the war as to make an interesting comparison.

The invasion of Belgium in self-defense, because the Germans claimed they had heard that the French were coming that way.

The first use of poison gas preceded by elaborate and totally false announcement of its previous use by the allies.

The necessity of shelling coast towns and of bombarding London and Paris in defense of the Fatherland.

The sinking of the Lusitania to protect the German soldiers from the cargo of ammunition which it was said to carry.

These hypocrisies were so revolting to the American mind that they were not universally believed until subsequent events demonstrated them beyond the shadow of a doubt.

So in the case at bar, it would be hard to credit the hypocrisy to which the Union officials have descended in seeking to excuse or cover up their deeds, if the evidence in this case had not demonstrated this so clearly.

Indeed, even if the District and Local Branches were not legally agencies for the National association in the furtherance of its objects in conducting a strike—which we have demonstrated is the necessary legal effect of the constitution of the Union and the practice thereunder—the efforts of the National Organization to shield the local participants by reiterating false and lying excuses for their conduct might well be considered in itself sufficient to implicate the National Union in the conspiracy.

Another feature of the later "Journal" articles is also noticeable in this connection. This is the effort to ridicule and make light of the criminal accusations with which the Union Officials were charged and to which they pleaded guilty.

Thus the following is found in the "Journal" of November 26, having been written in all probability by K. C. Adams the Publicity Agent of the National Union who was then in Fort Smith and wrote an article on the causes of the Prairie Creek Strike under the same date, November 20 (2408):—

"26 MINERS INDICTED.

"(Special to Mine Workers' Journal)

"FT. SMITH, ARK., NOV. 20.

"The most unnecessary Federal grand jury ever assembled by a Federal judge to probe disturbances of a stricken community today returned twenty-six indictments against members of the United Mine Workers. The following were indicted under the blanket indictment: P. R. Stewart, former president of District 21; Fred W. Holt, former secretary of District 21; James McNamara, former member of the City Council, Hartford, Ark.; James Slankard, resigned constable of Hartford Township, Sandy Robinson, Charles Robinson, Bee Trout, Valentin Burillo, John Manick, Moro Colo, Wm. Reed, Michael Ryan, Foster Bean, Charley Robinson, Charles M. Blackburn, Bruce Jordan, Marvin Ray,

Ernest Neim, James Z. Crossley, Frank Crossley, Marvin Stanfield, Wm. W. Roberts, John Champion, Dave Branch, Jesse Edward and Clint Burris.

"The indicted men are charged with conspiracy. Some of the 'overt acts' set out in the indictment are interesting. The fourth count follows:

" 'Said Moro Colo (otherwise called Morro Colo) and Foster Bean (otherwise called Foster Beam) on May 16, 1914, at Prairie Creek, aforesaid threw stones at certain employees of said Mammoth Vein Coal Mining Company, to wit Charles Cheek, Earl Kuntz, Will Bohannon and Levi Brown.'

"The idea of a special grand jury of the United States being necessary to determine the damage done by a 'pebble thrower' in what is said to be by the judge of the court a serious conflict between capital and labor. Never before in the history of the Nation has the same smallness in scope of procedure been equaled.

"The fifth count in the indictment is doubtless one of the most serious charges that was ever embraced in any indictment. It follows:

" 'Said Sandy Robinson (otherwise known as Sandy Robertson), Moro Collo and Charlie Johnson, James Slankard and others on June 10, 1914, at Prairie Creek, aforesaid cut and destroyed a bag of feed belonging to said Mammoth Vein Coal Company.'

"The terrible destruction of a sack of feed is another evidence of the great danger to which the lives of the peaceful citizenship of Hartford valley was daily menaced and made necessary the calling of the special grand jury.

"And now we have the indictment resulting from the fact that Judge Youmans received a threatening letter from some unknown, which the judge said made him ever fearful for his personal safety. The section of the indictment and the letter follows:

" 'Said James Z. Crossley, on July 27, 1914, deposited in a railway post office on the Rock Island

railroad, for mailing and delivery to the Judge of said United States Court for the western district of Arkansas, a certain letter, to wit, a letter of the tenor following:

" ' "July 27, 1914.

" ' "*Judge Youmans:*

" ' "DEAR SIR:—You know the acts you have decided upon. As a warning friend, we caution you to be more considerate on the administration of your decisions. You are notified to comply with the requirements of your office. If such is not complied with very shortly there's likely to be an unexpected change between your soul and fleshy temple, and you won't know the day, nor time, nor what means such will take place. Still we don't want to act cowardly, but give you a little time to act differently, and at any rate you will have a little time for future preparation for the place called heaven. You are weighed in the balance and found wanting. There's a great change soon to happen.

" ' "(Signed) FOREWARNED.

" ' "This is a barking dog, and if teased much longer will bite.

" ' "President of Committee." '

"Such were the findings of a special grand jury of the Federal Court empaneled by Judge Youmans to probe the recent mining troubles in Arkansas.

"All of the men indicted will surrender and make bond."

Crossley was a prominent member of the Frogtown Local. In February, 1915, when his case came up for trial he pleaded guilty to writing this letter, was sentenced to three months in jail and served his term (2483, 2467), **immediately after which he was put on the pension list by the Union** (2472).

The Journal made no mention whatever, of the pleas of guilty entered by Stewart, Holt, Crossley, McNamara, and the others to the charges thus made light of.

It is interesting to consider in connection with the Union's attitude toward the admittedly true criminal charge against a member for threatening the life of a Federal Judge, the provisions of Article XX, Section 3, of the Constitution of the National Association (450):—

> "Any member guilty of slandering or circulating or causing to be circulated false statements about any member of, or **any member circulating or causing to be circulated any statement wrongfully condemning any decision rendered by an officer of the Organization,** shall, upon conviction be suspended from membership for a period of six months and shall not be eligible to hold office in any branch of the Organization for two years thereafter."

To condemn the action of a union officer is *les majeste*, but merely to threaten the life of a Federal Judge on account of a decision rendered or under consideration by him is deserving of a pension.

In affirming the judgment entered by Judge Youmans on the verdict in favor of Looper against Jim Slankard, Clint Burris, Dr. Chambers and a number of the other participants in the Riot of April 6th, the Circuit Court of Appeals said of the comparatively moderate outrages then committed on behalf of the Union:—

> **"We cannot read the record of this case without feeling a deep indignation at the method adopted by those who proposed to unionize the mine in question.** No one now doubts the right of any organized or unorganized body of men to seek to persuade in a peaceful and orderly way their fellow men to join their ranks; **but violence and lawlessness, as arguments to that end or as means of coercing others, cannot be tolerated.** Any persons who resort to violence to accomplish their purposes fall under the condemnation of the law, and cannot escape responsibility therefor by any subterfuge adopted to conceal or mystify their identity. To

make the law effectual as against any such practices, it must, in our opinion, be held that any one who consciously participates in the creation of a state of confusion, intended to prevent identification of the wrongdoer, or to safeguard him from detection or screen him from the consequences of his act, is an aider and abettor in the accomplishment of the wrong, and should be held as a principal in its perpetration." (236 Fed. 336, 339).

The International Union, acting through its International Officers and its Official Organ, has done what the Court so strongly condemned.

White's address to the Executive Board on May 4th was a clear direction to Mullen to go back to his District and see to it, by similar methods if necessary, that Bache's mine continued idle.

His speech at Fort Smith on May 18th had the same obvious effect.

The Journal articles subsequent to the Battle of July 17th and the action taken in the various conventions were a distinct attempt to cover up the wrong which had been committed in the name of the Union, a wrong unanswerably admitted by the principal perpetrators in their pleas of guilty.

The International Executive Board at its meeting on November 30th, 1914, again clearly recognized the part which had been played by the Union at Prairie Creek.

The minutes of this meeting, at which President White, Vice-President Hayes, Secretary Green and all the Board members were present, show that President White made the following statement to the Board relative to the Bache-Denman strike (2406):—

"ARKANSAS.

"LEGAL ADVICE IN DAMAGE SUITS.

"PRESIDENT WHITE:—Federal troops are in control of a certain section of Arkansas as a result of

violence that has taken place. A Federal judge down there got the troops, as I understand it, on the ground that contempt was being practiced upon his court. Some time ago a large number of indictments were secured against **members** of the United Mine Workers, some of the officers of District No. 21; I think some of them received sentences of four or five months, but the sentences have been suspended. The grand jury has been in session since, and I think they rounded up some 26 indictments in Judge Youman's Court. The lawyer in charge, Mr. Covington, sent me a communication in connection with this matter, asking me to have it submitted to some attorney accustomed to dealing with similar cases for the United Mine Workers, in order to get his opinion. * * *

"**Mines down there were destroyed absolutely following the attempt of the Bache-Denman Coal Company to operate their mines non-union.** They were formerly operated under the contract of District 21."

Conclusive evidence, that the Prairie Creek affair had been the work of the Union and that it was as the **representatives** of the National Association that they had done what they did there, is found in the proceedings of the next Miners' National Convention.

In the biennial convention for 1916, President White submitted a long report, covering, among other things, the "Litigation" in which the Union had been engaged (2426).

"LITIGATION.

"This administration has been confronted with almost every conceivable form of opposition by the enemies of our movement. We have been engaged in litigation and our people have been subjected to the worst form of persecution at the incitation of the coal companies and their emissaries in the various non-union sections of the country."

* * *

"ARKANSAS.

"During the trouble in Arkansas a number of our **members and representatives** were indicted in the Federal Court and some were fined and imprisoned."

After referring to this and certain other "litigation" in which the Union had been engaged, he concludes the sub-division of his report on "Litigation" as follows:—

"Thus it will be seen by the attempts set forth in these proceedings that our enemies have been doing all in their power to menace the progress of our organization. Numerous other cases of injunction and litigation have been encountered **in defending our people from prosecution and in protecting the organization's financial resources,** but we will press on, vigorously opposing under all circumstances any attempt to throttle organization by such illegal methods. We will fight to the utmost at all times to defend our **persecuted** fellow workers who are the **innocent** victims of powerful interests which would destroy the right of the men of labor to organize and enjoy the benefits thereof."

This Report was referred by the Convention to a special Committee on Officers' Reports, which after investigation reported back to the Convention recommending its adoption, which was done by the Convention without dissent (2427).

At the trial plaintiffs, in order to explain exactly what the charges were to which President White thus referred, introduced the indictments which had previously been referred to in the "Journal," with the Pleas of Guilty entered by the defendants.

These were all based solely and entirely on the participation by the defendants in unlawful acts of violence or violation of the Federal Injunction in connection with the Prairie Creek Strike.

President White in his report to the Convention refers to the proceedings as litigation in which the Union, as

such, has been engaged. The Committee on Officers' Reports also characterizes it as "litigation against the organization" (2427).

White speaks of the defendants as having been indicted and convicted in their capacity as members and **represenatives** of the Union.

No justification was possible. **The men had pleaded guilty.** Yet there is not a word of condemnation. On the contrary, White reiterates the determination of the Organization to go on with the fight against those who oppose it.

One of the Union Officers and representatives thus sentenced in their own pleas of guilty was Pete Stewart, President of District 21.

He attended the 1916 convention as a delegate from the Frogtown Local (No. 2110 of Camp Bulah), and was passed as a member in good standing by the Credentials' Committee, whose report was approved by the Convention (2425).

Stewart had meanwhile been succeeded by another President in District 21, who, however, fell out with his District to such an extent that in the fall of 1916 all the Officers and District Board Members in District 21 resigned and President White was asked to appoint temporary substitutes until an election could be held (1644, 2433).

Among the appointments made in pursuance of this request was that of Pete Stewart, convicted on his own plea of being guilty of conspiracy to violate the laws of the United States by inciting Union men to violence in the course of a labor dispute, and under sentence of imprisonment for violating a Federal Injunction during the strike.

Stewart was appointed by White as Board Member representing Arkansas, this being the field in which he had conducted what White evidently regarded as efficient and satisfactory activities on behalf of the Union. He received his salary as such from the Union for the balance of the term for which he was appointed.

Stewart was also recognized as duly accredited delegate to the District Convention of 1916, called specially to investigate charges made against the then officers of the District in misapplying Union funds in connection with litigation and expenses growing out of the Prairie Creek Strike (2436). So also was John Manick (President of Local 1565, Midland), lately out of jail, having completed the term to which he had been sentenced by the Federal Court on his own plea of guilty (2445); also Oscar Layton (2436), the distributor of the Union ammunition, who had also been convicted, sentenced and served three months on his own plea of guilty (2436). Finally McNamara himself after his release from serving his two years term in the penitentiary (2482) was received as an accredited delegate to the 1916 convention, representing Local 1526 of Hartford (2445).

The proceedings of this Convention show that there were National Organizers present, who had been sent there by President White.

In the course of the proceedings of this Convention Wm. McLaughlin, Arkansas Board Member for District 21 in charge of the Prairie Creek Strike, said to the Convention (2438):

> "I was one of that Old Board and in Hartford during the entire trouble."

Mr. Covington made a long speech to the Convention, in the course of which the following transpired (2439, 2440):

> "MR. COVINGTON:—I now speak to the members of the Old Board. Did you fellows tell me to do what I did in the Prairie Creek District?
>
> "DELEGATE STEWART:—I, for one, said go ahead, **we will protect the members of our organization that got into trouble in the Hartford Valley to the last ditch.**
>
> "DELEGATE CUNNINGHAM:—That was with the full consent of the Board.

"BOARD MEMBER MCLAUGHLIN:—Yes, sir; we told you to go ahead and we would stay with you.

"National Organizer Dalrymple:—Yes, sir; that is right."

During the proceedings at the same Convention a special committee appointed by the Convention made the following report (2440):

"SECRETARY DOUGLAS:—I have a telegram here I want to read: 'Fort Smith, Arkansas, October 2d, 1915. T. B. Douglas, Secretary United Mine Workers, District 21, McAlester, Oklahoma. Have P. R. Stewart come here on the first train, need him matter connected with parole McNamara. Also his own case pending at Denver. Have him leave there on first train. It is absolutely essential that he be here early tonight. Covington and Grant.' * * *

"DELEGATE PLYMALE:—To the special convention: Telegram received this morning from our brother now in Leavenworth, James K. McNamara, calling your attention to the fact that from some cause his pardon has failed; therefore be it resolved that this convention make another effort in his behalf, and as P. R. Stewart, being thoroughly familiar with this case, having made one trip to Washington in this brother's behalf, therefore, we, your committee, recommend that P. R. Stewart be sent to Washington at the earliest date possible and shall be allowed his salary and expenses for making said trip, and we further recommend that the District pay his railroad fare and expenses for the former trip to Washington in behalf of these brothers' pardon.

"And we further recommend that James K. McNamara be wired the action of this convention."

The recommendation of the Committee was adopted by the Convention.

The same committee also made the following report (2441):

"DELEGATE PLYMALE:—Mr. Chairman and Brothers: I will state before reading this that a portion of this resolution was covered in substance by a resolution passed a few days ago with reference to the telegram received from Brother McNamara. I want to make that statement before reading this, so that we will not get confused. (Reading).

"To the Officers and Delegates of the Special Convention: We the undersigned submit for your consideration the following bills that were contracted and paid by Local Unions No. 1526 and No. 1912, located in Hartford, Ark.:

"Same being contracted in connection with the trouble that arose at Prairie Creek, Ark., and of which bills read as follows:

"HARTFORD, ARK., Sept. 20th, 1915.

DISTRICT NO. 21 U. M. W. OF A. TO JOHN CONROY, DR.

To railroad fare to Kansas City and return	$20.00
To street car fare from Kansas City to Leavenworth and return, including hotel bills etc.	10.00
To four days' service at $3.90 per day	15.60
Total	$45.60

"This bill is for services in connection with the presentation of petitions for the parole of James McNamara, now confined in the Federal Prison at Leavenworth, Kan., on a charge of conspiracy in connection with the Prairie Creek Trouble.

(Signed) "JOHN CONROY."

"Expenses incurred by Oscar Layton and James McNamara as a Committee elected by Local Union No. 1526 to see Judge Little in connection with James K. McNamara parole:

One day, Oscar Layton	$3.90
Transportation and hotel expenses	3.35
One day, James McNamara, Sr.	3.90
Transportation and hotel expenses	3.35
Total	$14.50

(Signed) "OSCAR LAYTON."

"SEPTEMBER.

P. R. Stewart

Date	Salary			
9th	$3.90	Railroad fare one trip, return Fort Smith to Hartford and Kansas City return		$20.
10th	3.90	Two return trips		
11th	3.90	Kansas City to Leavenworth		
12th	3.90	Hotel Bills, four days	2.00	10.00
13th	3.90	Fort Smith, Little Rock	4.77	2.00
14th	3.90	Little Rock, Fort Smith	4.77	2.00
		Total Expenses		$65.04

"NOTE.—This bill is for services with getting petitions and presenting them to the proper Board in trying to get Jim McNamara out of the Leavenworth Pen, who was given two years in connection with the Prairie Creek Trouble.

"The Locals in Hartford borrowed one hundred ($100.00) dollars to help get this brother out of Leavenworth.

"Yours truly,
"(Signed) P. R. STEWART."

"The foregoing bills make it plain that they are *bona fide* claims and made in the interest of those who are members of our organization, while they cannot at this time raise their voice in behalf of themselves and therefore, the abovementioned locals made it possible for their appeal for executing clemency to reach those in authority to grant same.

"Therefore, Be It Resolved, That this convention authorize the payment of said bills hereinbefore mentioned by reimbursing said Local Union for same.

H. C. JONES, L. U. No. 197
JONATHAN FOSTER, L. U. No. 2889
ARTHUR CROSS
MAT BAYLIN, L. U. 1136
Concurred in by the Committee."

The report of the Committee was approved by the Convention.

The John Conroy referred to was the Mayor of Hartford, who had paid the fares of the Tennessee witnesses to get them home and out of the way (*supra*, p. 113 of this Brief). The Judge Little was the former prosecuting attorney who was promoted to a judgeship shortly after the Prairie Creek strike.

Another Committee Report to this Convention is also significant (2443-2444).

> "DELEGATE MCSPADEN:—The committee that was appointed yesterday evening, we your committee to whom was referred the cases of Fred W. Holt, John Mamik, Oscar Layton, John Champion, James Slankard, Bill Reed, Dave Branch, James McNamara, Sandy Robertson and Clint Burris who have served or are now serving terms in jail, we recommend **owing to the financial condition of the District,** that the claims of compensation be denied. D. G. McSpadden, James Aubrey concurring; Nat Rosetto non-concurring.
>
> * * * * * * *
>
> "DELEGATE DEGNAN:—Mr. Chairman and Brothers:—It looks very queer to me how we are going to deny the claim of the brothers that laid in jail for six months. It was threshed out that they were entitled to it. We are complaining about Prairie Creek being exposed here at one time by the speech of our able lawyer, and you put in the records yesterday, putting a man on the pay roll, and you went on record as giving him pay until he gets a job, and he doesn't get it from the company, and here we have five or six brothers that laid in jail and get nothing at all. I think it is a shame that they don't give those brothers what they are entitled to. If you want to know the whole truth and go that far into it, you can get it, all right. Maybe you don't want to hear it.

"CHAIRMAN THURSTON:—WE DON'T WANT IT.

"DELEGATE DEGNAN:—I want this convention to pay the brothers wages while they were in jail, they are entitled to it. They went to jail and suffered six months, I understand, and now they want the little wages that they are entitled to, and we are not treating them fair. I am in favor of those brothers getting what they asked for, their wages while in jail."

The Committee report was finally concurred in by the Convention and the compensation to the imprisoned men denied, **solely on the ground that the financial condition of the District did not warrant it.**

See Aetna Indemnity Co. & Ladd 135 Fed. 636.

Even more conclusive of the responsibility assumed by the organization for the Prairie Creek Strike is found in the published reports of the Treasurer of District 21 during the period immediately following it.

The Secretary-Treasurer for the period from April 1 to September 30th, 1914, was Fred Holt, one of the men sentenced on his own plea of guilty (2482). In his report for that period we find the following (2468):—

" Expense of Prairie Creek Strike.

Webb Covington, attorney fee	$3,137.63
Ben Cravens, attorney fee	1,120.75
Bob McFarlane, attorney fee	995.25
Court Costs in Injunction Case.	
Expense of witnesses, etc	6,696.01
Merchandise, tents and supplies for **strikers** and their families	7,637.78
P. C. Hendricks, stenographer, transcribing evidence in injunction cases	220.45
William Wellshear, transcribing evidence in injunction cases	50.00
Thomas M. King, District Organizer, salary	612.30
Railroad and other expenses	678.62
National Organizer	810.26
K. C. Adams, publicity agent	454.63
K. C. Adams, special account	25.24

Included in the item of $7,637.78 entitled "Merchandise, tents and **supplies** for strikers," were evidently the 55 high power rifles and 8830 rounds of ammunition which plaintiffs were able to prove that Holt had bought and paid for with Union checks signed by him as Treasurer and countersigned by Pete Stewart as President, the stubs of which showed the entry "Strikers tents and supplies" (1928) the checks, however, being delivered to the hardware-dealers in payment for guns and ammunition (1836-1837, 1695).

It will be noted that the legal expenses, etc., above set out are not merely in connection with a past strike, but are the expenses in the injunction suit tried May 8, 1912, while the intimidations were still going on.

Plaintiffs in error make much of the fact that these expenses were paid out of the District and not the National Treasury. The money, however, all belonged to the United Mine Workers of America whether it was in the Home or Branch Bank account, and the Executive Board had at all times power to take it into its own Treasury (see *supra* pp. 21 and 23 hereof.)

In any event the shifting of the liability from the National Association to the District will not relieve plaintiffs in error from paying this judgment, since the *supersedeas* bond covers both organizations.

In the Treasurer's Report for the next six months' period, October 1st, 1914, to March 31st, 1915, under the heading "Donations to Legal Battle in Defense of Prairie Creek **Strike**" are the gifts from a long list of Local Unions which had had no direct part in the trouble, a number of them being from Districts outside District 21 (2470).

The same report under the head of "Defense Fund," claimed credit for the following disbursements (2470):—

"Aid L. U. 1565, Midland	$7,386.00
Aid L. U. 340, Midland	3,405.50
Aid L. U. 2110, Midland	3,453.00
Aid L. U. 2494, Midland	3,043.50
Aid L. U. 1912, Hartford	108.00
Special aid to Hartford	543.50
Fred W. Holt	30.00

Legal services, court costs, legal expenses and supplies for **strikers** in Hartford Valley	12,205.73
Webb Covington, attorney	2,068.46
Hartford Valley expense, cost of filing papers for appeal in contempt case	715.00
Guy Williamson and P. C. Hendricks, transcript fee	419.15
Fred W. Holt	74.78
R. W. McFarlane	672.35
Committee work at Hartford	1,146.10
Slankard and Stroupe case	37.40"

The next six months' report, covering the period from April 1, 1915, to September 30, 1915, also contains entires of significant disbursements.

Under the title "Defense Fund" we find the following (2471):—

"Meals for men in jail and supplies and FINES	$8,994.80
To Fred Holt	39.00
Aid to James Crossley	42.00
Aid to James McNamara	27.00
James Slankard	65.00"

Again in the report of October 1, 1915, to March 31, 1915, we find disbursements paid for the "Defense Fund" as follows (2472):—

"P. R. Stewart, services on pardon case for James McNamara	$174.70
Klinger's Cafe, meals for men in jail, Prairie Creek trouble	18.50"

Under Article X, Section 1, of the Constitution of District 21, the Defense Fund is available only for the aid of members engaged in strikes (2842).

This report also shows that James Crossley, who wrote the threatening letter to Judge Youmans, was placed on

the Union Pension List four days after he came out of jail and was kept thereon thereafter (2467, 2472).

The most significant feature of the foregoing extracts is the conclusive proof that the Union voluntarily undertook the entire expense of defending the Injunction Proceedings, the Contempt Cases, and finally the Criminal Prosecutions, although the Union itself was not a party to any one of these proceedings, which were directed exclusively against the individual participants.

See Allis-Chalmers Co. *vs.* Iron Moulders' Union, 150 Fed. 155, 163–164.

If as the Union would now have it appear, these men had acted on their own initiative and not with the authority of the Union, to serve its purposes, why did it spend its funds in defending them?

If the Union suggests that it was to protect them from persecution, why, we ask, was it necessary for this purpose for the Union to pay the fines to the amount of $7500 which were imposed in the Criminal cases on the defendants own pleas of guilty (2471, 2484)?

The disbursements above shown are in themselves a complete ratification by the Union of the illegal acts of its "members and representatives."

The associate action by the Local Unions which participated in the trouble, is to be same general effect. Moneys were collected for the "boys in jail," and funds subscribed to secure their pardon (2450–2452, 2465–2467).

Additional Union Action Indicating Union Approval of Acts of Participants.

There are very few cases where Labor Leaders plead guilty.

Usually they deny everything and in such case their associates, having the right to give them the benefit of the doubt, may properly support them until they are proved

guilty. Even after conviction there is the appeal and the cry of a miscarriage of Justice.

In such a case their continuance in the Union cannot be said to be a conclusive ratification by the Union of their illegal acts, since the latter are denied.

In the case at bar, however, Burris, Robinson, Stewart, Holt, Crossley, Champion, Branch, MacNamara, Slankard, Layton all pleaded guilty to the criminal charges. Even from the jail sentences under the contempt proceedings (which were based on the same facts as the criminal cases) only Stewart took an appeal. While, after affirmance of his sentence by this Court, Stewart secured a pardon from the President, this amounted in law to an admission by him of the justice of his conviction.

Burdick *vs.* U. S., 236 U. S. 79, 94.

The Records of District 21 and of the various Local Unions (or such of them as we were able to secure for the trial) are full of offices, honors, benefits and pensions given to the men who on their own confession had flagrantly violated the law in furtherance of the objects of the Union in the Prairie Creek Strike.

It is also significant that the minutes of the Executive Board of District 21 were never produced (2503–2504), although the members of the Board testified that such minutes had been kept (2752, 2758).

So also the books of certain of the Local Unions which took the most prominent part in the affair were never forthcoming, and those that were produced had pages torn out and passages erased between the most significant dates (2449, 2465, 2466–2467).

This action by the Branches of the Union of which the guilty men were members, conclusively disproves any possible contention by the defendants that the injury to plaintiff's business and property was not done by the Union for Union purposes but was a spontaneous popular outbreak with which the Union had nothing to do.

Not one of the acknowledged participants was ever

officially reproved by the Union, or in any way fined or disciplined or expelled or even suspended from membership.

In fact President White testified that at no time during his entire connection with the Union had he ever known of any disciplinary action having been taken by any officer of the National Organization against any National Officer or employee or member of the Union or against any District or Local Officer or employee, or against any District or Local Branch, on account of violence or injury to life or property in labor disputes, and that he knew of no instance in which the Union had given publicity in the "Journal" or otherwise to any notice to the members that they would be subjected to any discipline by the Union if they participated in such violence (480–482).

The only approach to such a notice which White could recollect was prior to his Presidency, when, during the Alabama strike in August, 1908, a circular was issued to the membership of the Alabama District stating that violence and disorder were the Union's worst enemy and admonishing the members to observe the law (482, 498).

Even in this circular, however (to which White could recollect no counterpart since 1908), there was no statement that any member disregarding the admonition would be fined, suspended or expelled by the Union, nor was any such action ever taken by the Union. It was obviously intended merely to put the Union straight with the public and to give the Organization a ground for stating that any violence which occurred was not of its making.

Such insincere protestations of innocent and virtuous intention, not followed by the effective action which the Union had it in its power to take, were like the German submarine notes, publicly proclaiming the best of intentions, but saying between the lines to every submarine commander that if he should happen to do it again, he, too, might privately receive the iron cross.

We have heretofore called attention to the testimony of McLaughlin, the District 21 Board Member in charge of the Prairie Creek strike, who said that while it was the practice of his organization to discipline any members of the Union who violated its constitution, no such action was ever taken against a member merely for engaging in strike violence, the abstinence from which was not evidently regarded as part of the basic principles on which the Union was founded or conducted, or of its organic law (2744–2745).

The Record in this case is full, not only of inaction by the Union in neglecting to discipline such members, but of affirmative action discriminating in favor of such members by paying benefits and pensions to them and their families and by appointing them to positions of trust and influence in the Organization.

A partial summary of such instances is given in the tabulation at the end of this Brief. (Appendix D.)

4. Acceptance by the Union of the Benefit to it from the Destruction of Plaintiff's non-Union operation.

It would seem unnecessary at this point to enlarge on this subdivision of Proof of Intent. It has been referred to in connection with the discussion of the other headings. On May 4th President White boasted to his Executive Board that as a result of the riot of April 6th the Bache mines "have been idle ever since." (2390.)

This boast holds good to the present day.

The plaintiffs have been ruined, their mines destroyed, **and they have never again been able to operate on an open-shop basis.**

They were intended to continue as a living example to all those who presume to oppose the will of the exponents of the gospel of brute force.

The Union has taken the benefit of the acts of its members and representatives in forcing the closing of this open-shop operation, acts done for the express and sole purpose of securing such benefit to the Union.

The responsibility of the Union necessarily follows.

5. The Failure by Defendants to Expel or Discipline Members Known by it to have Participated in the Illegal Acts Causing the Destruction of Plaintiff's Business and Property.

The evidence on this heading has already been discussed. The Record shows not only no evidence that any Union participant was expelled or disciplined by the Union, but shows affirmatively that none was. On the contrary, all the ringleaders were rewarded.

The legal effect of such action or inaction by the defendant Association is discussed hereafter under Point Fourth (*infra*, pages 226–237).

Specific Reply to Points in Brief of Plaintiffs-in-Error.

In so much as we have not found it advisable to group our argument on the liability of the Union under the same heads and sub-heads as plaintiffs-in-error, before developing our argument we will state categorically our reply to each of the Points argued by the other side.

> "First.—This Court has jurisdiction of this writ of error."

Not disputed.

> "Second.—The Court below erred in holding that an action could be brought, process had and judgment recovered against unincorporated labor unions, either the United Mine Workers of America, or District 21, or the various local unions named in the complaint, in an action under the Sherman Anti-Trust Act."

The present suit is not directed against the members of the Union individually, except as to those specifically named as defendants, but against the Union as an Association, which has been personified by the Sherman Act for the purpose of responding in damages for its violation.

The Sherman Act gives a remedy against unincorporated associations in the form of labor unions organized as are defendants, for treble the damage caused by their violation of the provisions of that Act. A remedial statute, all-embracing in its scope, it provided in Section 7 a new remedy in the Federal Courts against any person violating the Act, and by Section 8 defined the word "person" not (as plaintiffs-in-error construe the provision) to include merely "corporations and associations organized under the laws of any of the States and the United States", etc., but to include "corporations and associations **authorized by or existing under**" such laws.

The purpose and meaning of this clause was to make the remedial provisions of the Act as sweeping and far-reaching as its prohibitory sections, and to include as parties against whom the remedy was directed **all** corporations and associations, no matter where or how formed, whatever be the legal procedure employed in their organization.

The statutes of certain of the States in which the United Mine Workers have active District Branches specifically **authorize** the formation of trade unions by the association of laborers, without the necessity of statutory incorporation, and give to such associations qualities and benefits not possessed at common law. The United Mine Workers is an association **"authorized by"** the laws of such states.

The Clayton Act and other Acts of Congress, as well as the statutes of each of the eighteen states in which the United Mine Workers carries on its business by means of active District Branches, specifically recognize Labor Unions as existing therein and give to them rights, privileges and benefits in addition to those possessed at common law. The laws of twenty-five other States and Territories in which the United Mine Workers have at present no active organization also contain such laws.

It is immaterial whether the word "laws" refers to statutes or to statutes plus common law, since in any event, in view of the above legislation, the United Mine Workers is an "association **existing under or authorized by** either the laws of the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

The method of serving the Associations was that prescribed by the Arkansas Code.

> "THIRD.—Recovery against the United Mine Workers of America was entirely unwarranted by the evidence."
>
> "I. A labor union, as such, is not within the Sherman Anti-Trust Act."

Covered also by the answer to the second point.

We do not dispute the right of workingmen to form labor unions or question the decided advantages to the community from such unions when legitimately conducted.

There is no attempt, by these proceedings to hold the "hundreds of thousands of members throughout the country", personally responsible for the injuries alleged, or to take away the homestead from the innocent miner in Wyoming or Pennsylvania, but simply to recover, to the extent of about $1.15 per member, from the associate treasury a part of the fund contributed by the members to carry on the activities of their association, the administration of which they have collectively intrusted to the officers who have brought about the injury sued for.

> "II. The constitution of the United Mine Workers of America is the agreement of membership. It fixes the terms upon which these miners unite and contribute to the funds which the judgment below turns over to the defendants in error. The constitution and the objects of the association are entirely lawful."

The lawfulness of the constitution and objects of the association are not questioned so long as these objects are attained in a lawful manner.

This constitution has heretofore been analyzed (*supra.* pp. 14–31).

Under it the District and Local Branches are agencies, created by the National organization to carry out its objects and are subject always to its control. These Branches are but a part of the association, their officers are its officers, their funds its funds, and their acts its acts.

By the constitution, the District Branches are specifically authorized to order Local Strikes "on their own responsibility," without first consulting and getting the sanction of the National Executive Board. The word "responsibility" is not here used, as plaintiffs in error contend, in the sense of "liability" but of "initia-

tive." The purpose and effect of the provision is to enlarge the power of the Districts and not to limit it. There is here no attempt to restrict the liability of the National Association nor would such an attempt be legally effective if intended.

The strike at Prairie Creek was a Local Strike ordered by District 21 by authority of the National Constitution.

> "III. The United Mine Workers of America did not authorize, participate in or ratify the alleged acts committed in Arkansas by reason of which the recovery of damages was allowed."

The National Association both authorized, participated in and ratified such acts.

Through the national officers and the official journal it actively encouraged the district and local officers and members, the agencies which it had created to carry on its Arkansas business, to continue and make effective the flagrantly unlawful methods which they were employing there, to protect the Union in other States, by destroying plaintiff's business and property and thus keeping the plaintiff's open shop coal from being shipped to such other States in competition with Union mined coal there produced.

This association is liable for torts committed by its authorized agents in the course of their duties and ratified by its delegated officers and by its membership in convention assembled, just as are corporations.

> "IV. Notwithstanding the provisions of the Constitution of the International Association, and notwithstanding that it did not authorize, participate in or sanction either the 'strike' or the alleged wrongful acts in Arkansas, liability has been predicated in the view that these acts in Arkansas were committed in carrying out the 'aims, objects and purposes' of the national organization."

The foregoing is not the basis of but merely one of the steps in the conclusion reached by the court below, which

was rested on a finding of authorization, active participation and ratification as well as on the fact that "it is established beyond question that the property of the plaintiffs was burned and their mines destroyed in the course of the strike, for the purpose of carrying out the aims, objects and purposes of the national organization."

While such objects were lawful and might have been attained in a lawful manner, the means adopted by the authorized agencies of the association and encouraged and approved by it were unlawful in the extreme,—intimidations, assaults, arson and murder.

> "FOURTH.—The verdict was also unsustainable with respect to District 21."

Covered by the answer to Third.

Furthermore, the contention by plaintiffs-in-error that the National Association is not liable for the acts of District 21, merely places the liability in the District, which is a party to the supersedeas bond.

The connection of District 21 with the Prairie Creek strike was even more direct than that of the National Association.

> "FIFTH.—The facts proved at the trial did not justify a recovery against any of the defendants under the Sherman Anti-Trust Act. There was no proof of any combination or conspiracy in restraint of interstate commerce."

The verdict of the jury is conclusive that plaintiffs' business and property were destroyed by defendants for the sole purpose of preventing plaintiffs from shipping their coal to other States in competition with that there mined with Union labor.

Plaintiffs-in-error confuse intention with motive.

While defendants' motive may have been to increase their wages and lessen their hours of labor, their intent was to restrain interstate commerce.

It is entirely immaterial that in destroying our mines the immediate participants did not have the Commerce Clause in mind. What is important was their collective

intention—to restrain us from shipping our coal to other States.

While mining and production are not interstate commerce, the shipment of coal is, and it was to prevent the latter that the injuries were committed.

When the specific intention to restrain interstate commerce is found, every means used to attain that end is a direct interference, whether that means be the destruction of the means of production, or, as was the case here also, the burning of coal cars loaded and consigned to other States.

"SIXTH.—The District Court erred in its instructions to the jury."

The Trial Judge did not so err—

(1) The instructions given were proper.

(2) No proper exception was taken.

The Act of Feb. 26, 1919, does not dispense with the necessity of a timely exception designed to give the trial Judge opportunity to correct his ruling, but merely prevents a reversal on account of immaterial errors to which proper exceptions were taken.

(3) The facts justified a binding instruction for plaintiffs on the points of fact covered by the supplemental charge.

"SEVENTH.—There was a misjoinder of plaintiffs and their causes of action, the complaint failing to show any community of interest on the plaintiffs or any joint cause of action."

This alleged error is precisely the kind covered by the Act of February 26, 1919.

The suit was properly brought and prosecuted under the practice of Arkansas, which, by the Conformity Act, controls the procedure in the Federal Courts, no Federal Statute conflicting therewith.

EIGHTH.—The orders requiring the production of the books and papers did not violate the constitutional rights of the defendants or their officers.

NINTH.—The judgment should be affirmed.

POINTS.

We present the following points:—

FIRST.—The Sherman Anti-Trust Act gives a right of action for its violation against an unincorporated Labor Union.

SECOND.—An unincorporated labor union is an "Association authorized by the laws" of certain of the States; it is an association existing under the laws both of the United States, of all the States in which it carries on its activities as well as of Canada where it also has an active branch, which laws give to such an association rights and benefits not possessed by it at common law.

THIRD.—The procedure employed in bringing defendants into Court was both derived by clear and necessary implication from the Sherman and Clayton Acts and is that prescribed by the Arkansas Code.

FOURTH.—The United Mine Workers of America, acting through its National Officers and its Official Journal, as well as by its duly authorized District and Local Branch Agencies, authorized, caused, participated in, encouraged, ratified and approved the destruction of the business and property of defendants-in-error.

FITTH.—The destruction of the business and property of defendants in error was accomplished in the course of an unlawful combination and conspiracy in restraint of Interstate Commerce.

SIXTH.—The trial Judge did not err in his supplemental instructions to the jury.

(1). The instructions were proper.

(2). No proper exception was taken by defendants.

(3). The facts justified binding instructions on the matters as to which the trial Judge expressed his opinion.

SEVENTH.—There was no error in the joinder of parties or causes of action.

(1). The alleged error was not substantial.

(2) The question was not properly raised.

(3). There was no misjoinder.

EIGHTH.—There was no error in the requirement of the production of the association's books and papers.

NINTH.—The judgment should be affirmed.

FIRST. **The Sherman Anti-Trust Act Gives a Right of Action for its Violation against an Unincorporated Labor Union.**

The crucial question for decision by this Court, is the right to make the United Mine Workers of America, an unincorporated association, a party defendant in its associate name, or through its representative officers, to a suit for damages under the Sherman Anti-Trust Act, and, after final judgment, to attach its associate funds in satisfaction thereof.

On the decision of this question, which in its essence is one of procedure merely, depends the effectiveness of the remedy given to persons injured in this class of cases by the violation of the Anti-Trust Act.

The Danbury Hatters Case (208 U. S. 274) has settled the question that when Congress forbade **every** combination or conspiracy in restraint of Interstate Commerce, it meant "**every**" such combination and not "every combination except combinations of laboring men."

In that case the Union itself was not made a party to the suit, which was directed solely against individual members of the Union who had participated in, sanctioned or ratified the unlawful acts complained of, and who were men of substance, real estate belonging to them sufficient to satisfy the judgment having been attached at the institution of the suit.

The claim for exemption from liability to suit on behalf of the United Mine Workers is based solely on the ground that the law furnishes no remedy against them and no method of procedure to make their associate property liable for the damage done by them, by means of that very associate property, in pursuance of their associate objects.

Their position is apparently this:—

Granted, though reluctantly, that the Act applies to combinations of laborers who burn and dynamite property to keep it from interstate shipment; granted that this defendant has violated the Act and in so doing has

destroyed plaintiff's business and property; granted further that Congress intended to give an effective remedy to the party so injured against those who did the damage; although the Federal Court can declare unlawful the combination, as conducted, and enjoin its further violation of the Act, and although under Section 6 the United States can forfeit its associate property in the course of interstate transportation, yet its associate funds are immune from process to satisfy the damages **which the use of these very funds have caused,** merely because the Union has not seen fit to incorporate itself and thus become subject to the law.

No matter how outrageously the Union may violate the law, no matter how completely and effectively it may restrain interstate commerce, acting as a unit, as an association, and employing its vast collective power and resources illegally to destroy life and property for the sole purpose of furthering the collective interest of the Association, burning and dynamiting the means of producing the necessities of life in order to prevent them from coming into interstate competition with articles produced under Union domination, yet it contends that these same Union funds **which were used to cause the damage** cannot be made to pay for it, simply because the Association refuses to become formally incorporated.

According to the contention of the Union in this case,—stated by it in its petition to this Court for Writ of Prohibition (Suggestion for Writ, January 1917, pp. 10–11) as essential to the preservation of its "unified power and strength" and for the successful continuance of its "activities"—no degree of effective unified action which such an incorporated association may attain is sufficient to render its associate funds liable for the unlawful injuries which, in its associate capacity and to attain its associate ends, it may inflict on other people.

This Union is in fact organized in a form far more effective for unified action than is the case with most corporations.

It has innumerable delegated officers, with deputies subject to their exclusive direction, all agencies of the main organization employed solely to do its bidding in the furtherance of its interests.

It has vast funds,—as far back as 1906 it had more than $2,500,000 in its treasury—, which funds in the hands of unscrupulous men may be devoted exclusively to harming innocent people by restraining and destroying interstate trade.

Must these injured citizens rely for their remedy on the financial responsibility of the irresponsible and for the most part misguided members, who do the actual burning, killing and destruction, provided the victims can prove exactly which particular members did the damage?

The Union would have its responsibility, its liability to suit, depend not on whether its organization is **in fact** bound together as a unit for effective associate action, but merely on whether by its failure to take out a State or Federal Charter,—a mere formality, which would not change by one iota its essential organization—, it chooses not to become subject to the law.

It would make as the test of its responsibility not what it is, but what it wishes to be considered.

Certainly a construction of a remedial statute which will produce such a result is not to be adopted unless the language of the Act is so clear as to bear no other interpretation.

For convenient reference, we have printed the entire text of the Sherman Act as Appendix B (page 324 hereof). Sections 7 and 8 of that Act are as follows:—

> "SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this Act, may sue therefor in any Circuit Court of the United States in the district in which the defendant resides or is found, without

respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

"SEC. 8. That the word 'person' or 'persons,' wherever used in this Act, shall be deemed to include corporations and **associations existing under or authorized by** the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

When Congress expressly included in its definition of the "person" against whom suit might be brought, corporations **or associations existing under** or authorized by State or Federal laws, it obviously intended to make the test of liability not the volition of the parties liable or the ingenuity of the attorneys who organized them in a particular form of Association, but the actual existence of such an Association in a form sufficiently tangible to commit a violation of this Statute in its associate capacity.

The provisions of the Sherman Act were made by Congress so all embracing that the ingenuity of the greatest lawyers which the country has produced has been unable to find a means to do what the Act forbids and yet escape responsibility therefor.

Section 1, defining the things declared illegal, attempts no specification, but includes "**every** contract, combination in the form of trust **or otherwise,** or conspiracy," which produces the unlawful result,—restraint of interstate commerce.

Sections 7 and 8 which give the remedy, do not confine it to suits against corporations and individuals subject to suit at common law, or to corporations and associations organized under statutory authority; they include not only associations organized under State or Federal law, but also those **authorized by** and those actually **existing thereunder.**

Here is a statute evidently drawn with the very idea of

making it impossible for those violating it to escape responsibility by technicalities.

If they do what the Act forbids, no form of organization can shelter them.

From Sections 1, 2 and 3 there are no exceptions.

Under Sections 4 and 5, authorizing the Federal Courts to prevent and restrain violations of the Act, the Courts have frequently exercised the power thus given by dissolving the unlawful combination, whether in a corporate form like the Northern Securities Company, or in the form of an unincorporated association such as the Transmissouri Freight Association or the Joint Traffic Association.

The associate property of such an illegal combination, however organized, is forfeitable to the United States under Section 6.

Under Sections 7 and 8, if the Association actually exists in a form sufficiently tangible to do the damage, its associate funds are made available to pay for it, particularly where, as here, such associate funds were used to cause the injury.

Section 5 of the Clayton Act provides "that a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the Anti-Trust laws to the effect that **a defendant** has violated said laws shall be *prima facie* evidence against **such defendant** in any suit or proceeding brought by any other party against **such defendant** under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto."

So far as we know no question has ever been raised of the propriety of joining as a party defendant to such suits by the United States, any unincorporated association which itself constituted the combination violating the law.

Indeed the decisions of this Court in two of the leading Anti-Trust cases bear the names of unincorporated asso-

ciations,—U. S. *vs.* Transmissouri Freight Association and U. S. *vs.* Joint Traffic Association. One of the Circuit Court decisions cited with approval by this Court in the Danbury Hatters Case was U. S. *vs.* Workingmen's Amalgamated Council, 54 Fed. 994.

See also cases discussed hereafter on pages 229–237 hereof.

Under Section 5 of the Clayton Act the decree of the Court in such a case would *prima facie* bind **such defendant** in a subsequent civil suit.

This provision of the Clayton Act sustains the common sense interpretation of the Sherman Act and the interpretation which will carry out the obvious intent of Congress to give a real and effective remedy to persons injured by its violation,—that where an association exists in a form sufficiently tangible to cause, and to be found guilty of, a violation of the Act, its associate funds can be made answerable in a civil suit for the injuries sustained.

If the Association exists to do the damage, its associate funds also exist to pay for it.

All that is necessary to hold an association liable for damages under the Sherman Act is to show its existence in some form sufficiently tangible to enable the Court by its process to reach its associate property.

It cannot take advantage of its associate and combined existence to harm other people in the manner forbidden by the statute, and not at the same time have such associate funds subject to its provisions.

The important thing is not whether the combination is in the form of a statutory entity, but whether it has taken the form of a tangible association, which has used its associated funds, its group powers, its ability to act through delegated representatives, in other words, ITS COMBINED EFFECTIVENESS, **to the injury of the plaintiff.**

SECOND.—**An Unincorporated Labor Union is an "Association Authorized by the Laws" of Certain of the States; it is also an "Association Existing Under the Laws" both of the United States, of all the States in which it Carries on its Activities, as well as of Canada where it has an Active Branch, which Laws give to such an Association Rights and Benefits not Possessed by it at Common Law.**

The ordinary and accepted legal way of describing a corporation or association which has obtained corporate or quasi corporate existence as a distinct legal entity under a Federal or State Statute, is by the phrase "**organized and** existing under the laws of the States or of the United States."

It will be noted that in Section 8 of the Sherman Act, defining the parties liable to suit for damages, Congress does not use the words "organized under," but the broader phrase "authorized by." It will be further noted, that the language is not "authorized by **and** existing under," but "existing under **OR** authorized by."

Since a corporation can exist as such only by virtue of a statute, as applied to corporations the provision would have had substantially the same effect, whether Congress had used the words "organized under," "authorized by" or "existing under" State or Federal laws.

Associations, however, may be of three types:—

(1) A quasi-corporation, organized pursuant to a statute, to which it owes its powers and its very existence;

(2) An association formed at common law but with the express sanction of a statute authorizing it so to be formed;

(3) An association formed at common law which, while not expressly authorized by statute, yet is recognized by statute as properly existing and is given statutory rights and benefits not enjoyed at common law.

The above distinction is clearly brought out in Elliot *vs.* Freeman, 220 U. S. 178, hereafter quoted.

In the first place there may well be a clear distinction between an association **"organized under** the laws of a State" and an "association **authorized by** the laws of a State."

In the one case the association would be formed by virtue of the statute and would owe its entire existence thereto.

In the other case the association might be formed at common law with the **express sanction** of a State statute.

One of the three States over which District No. 21 of the United Mine Workers extends and in which the national organization, through its branch agency, District No. 21, carries on its activities, is Texas.

Chapter 2 of Title 77 of the Texas Code (III Vernon's and Sayles' Digest, page 3438), is entitled "Labor Organizations" and Article 5244 of this title is as follows:

> "Article 5244. Right to Organize—**It shall be lawful for any and all persons engaged in any kind of work or labor,** manual or mental, or both, **to associate themselves together and form trades unions** and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service, in their respective pursuits and employments."

In Pennsylvania also, where the United Mine Workers have five active district branches, the Act of May 8, 1869, P. L. 1260, makes it

> "lawful for any and all classes of mechanics, journeymen, tradesmen and laborers to form societies and associations for their mutual aid, benefit and protection and peacably to meet, discuss and establish all necessary by-laws, rules and regulations to carry out the same."

The Pennsylvania Act of June 16, 1891, P. L. 300, is to the same effect.

Here, therefore, we have statutes of two of the States in which the United Mine Workers carries on its activities, in one of which is located District 21, **specifically authorizing the formation and existence of unincorporated labor unions therein.**

Since the Sherman Act does not use the words "organized under" but the words "authorized by," it would be impossible to imagine how, in the face of these statutes, it can possibly be argued that the United Mine Workers was not "authorized by the laws of **any** State."

The Act, it will be noted, does not read the "laws of the several states," but "the laws of **any** State."

The Sherman Act, however, uses not only the words "authorized by" but also the words "existing under" and that in its disjunctive. This phrase "authorized by **or existing under**" makes the inclusion of unincorporated labor unions clear beyond a doubt.

In practically every state in the United States, including all of the States in which the United Mine Workers has active district branches, there are statutes distinctly recognizing trades-unions as **existing** thereunder, and giving them a standing and protection in connection with their associate rights and interests.

The most noticeable instance of such statutory recognition is the provision in Section 6 of the Clayton Act, quoted by the Circuit Court of Appeals, that "nothing contained in the anti-trust laws shall forbid the **existence** and operation of labor * * * organizations."

Indeed this provision might well be said to constitute a direct authorization by Congress of the organization and continued existence of labor unions.

Certainly it is a distinct recognition that such associations were among those "existing under the laws of the United States" within the meaning of the Sherman Act.

The Clayton Act is relied on by the other side as exempting labor unions from liability under the Anti-Trust Acts.

It was intended by Congress to have no such effect.

All that Section 6 of the Clayton Act was designed to do was to allay the fears and put at rest the repeated statements of Mr. Gompers and the other labor lobbyists that the Sherman Act, as construed by certain Courts and United States Attorneys, subjected labor unions to prosecution and suit not only for unlawful activities in direct restraint of interstate commerce, but also on account of their very existence.

Sections 6 and 20 of the Clayton Act have frequently been referred to by Labor Leaders as Labor's Bill of Rights.

An examination of the proceedings in Congress preceding the passage of the Clayton Act shows that it is, as its language purports to make it, a Bill of Rights, and not a Bill of Special Privileges.

Believing that the report of the Conference Committee submitting the Clayton Act for passage and certain of the debates in the Senate and House on the Bill are instructive as showing the purpose and scope of the Act, but not desiring to cumber the body of the brief herewith, we have reproduced such pertinent extracts in an appendix hereto (Appendix A, p 305).

These extracts show clearly that the scope of the Clayton Act was intended to be as limited as its language would indicate.

There was no thought in the minds of Congress to authorize, or to prohibit the Courts from restraining, illegal acts, causing damage to life and property.

Lamar *vs.* U. S. 260 Fed. 561 (*certiorari* refused 250 U. S. 673).

U. S. *vs.* Norris, 255 Fed. 423.

Kroger Co. *vs.* Retail Clerks' Ass'n., 250 Fed. 890.

U. S. *vs.* King, 250 Fed. 908.

Montgomery *vs.* Pacific El. Rwy. Co., 258 Fed. 398.

Dail-Overland Co. *vs.* Willys-Overland, 263 Fed. 171, 185.

Kinloch Telephone Co. *vs.* Local Union No. 2, 265 Fed. 312.

It was not intended to change or restrict the Sherman Act, but merely to allay the fears of the labor leaders that it would be extended to prevent their legitimate activities.

As applied to the present case, where the labor union has employed unlawful and criminal means for the purpose of doing the very thing forbidden by the statute, the only effect of the Clayton Act is to make it entirely clear that the commission of such acts by a labor organization was one of the very things to which the Sherman Act was designed to put a stop and for which it intended to provide an effective remedy.

It clearly recognizes labor unions, incorporated or unincorporated, as existing under the laws of the United States and hence as one of the "persons" made liable to treble damages under Section 7 as defined in Section 8.

It also clearly contemplates such an association as a proper party defendant in proceedings instituted by the United States and hence as one of the parties against which such a decree will be *prima facie* evidence in a subsequent civil suit.

The declaration that labor is not a commodity or article of commerce is not an enactment or statement of law but merely an attempt to state a fact.

One of the principal difficulties with the labor leaders is their inability or refusal to recognize the difference between the status of a laborer or a labor union in dealing with the agreement or refusal of men to work, and which may or may not directly affect interstate commerce, and their status when they expand their activities to the extent of intimidating, assaulting or murdering their fellow workmen, and burning or dynamiting their employers' property.

Whether or not the labor of a human being is a commodity or an article of commerce, certainly coal loaded in a railroad car and consigned to another state is both.

Another principal point on which the logic of the labor advocates fails is the refusal to recognize the distinction in law between the arithmetical sum of a number

of acts, of no legal weight considered separately, and the aggregate of such acts as part of a conspiracy.

As so clearly stated in Aikens *vs.* Wisconsin 195 U. S. 194, 205, and quoted in the Danbury Hatters Case 208 U. S. 274, 299:—

> "No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected acts or omissions may be made a step in a criminal plot, and if it is a step in a plot neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law."

See also Gompers *vs.* Buck Stove & Range Co., 221 U. S. 439.

In the present proceedings no attack is made on the existence or operation of the United Mine Workers lawfully along the legitimate lines provided in its constitution. In carrying out the object and purpose of the association it has deliberately and flagrantly violated the law.

Certainly, the last clause of Section 6 was not intended to exempt a labor organization from responsibility for such a wrong—clearly, it must be read in connection with the balance of the sentence, as applicable only so long as such organizations and members are "lawfully carrying out the legitimate objects thereof."

It will be noted that this last clause covers not merely the organizations themselves, but "the members thereof." To hold that this clause took labor unions from without the application of the Sherman Act, no matter what they do, would necessitate the conclusion that under no circumstances could a member of such a union be found guilty of or liable for violating that Act. The mere membership in such an organization would thus give, to any one enjoying the same, a sort of ambassadorial immunity from prosecution or suit, which trust organizers might eagerly and easily acquire.

The obvious answer is that neither a labor union nor

a member thereof is guilty or innocent of violating the Act because it is a union or a union member, but merely because it or he does things which unreasonably restrain interstate commerce.

The material thing is not what the defendant calls itself but what it is capable of doing and does in fact do.

As applied to the case at bar, therefore, effect of the Clayton Act is, first, to make it clear that the proper **existence** of labor unions, legally exercising their proper functions by lawful means, is sanctioned and thus impliedly authorized by Congress; second, to recognize, by the clearest implication, that an unincorporated Labor Union is one of the associations "existing under or authorized by" Federal and State laws, as described in the Sherman Act.

Congressional recognition of the existence of trades-unions, similar to that by the Clayton Act, as well as their liability to prosecution as such by the United States for violation of the Sherman Act, is found in the rider to the Appropriation Act of August 1, 1914 (38 Stat. at L pp. 53, 652, 886), providing that no part of the appropriation be "spent in the prosecution of **any organization** or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours or bettering the conditions of labor, or for any act done in furtherance thereof, **not in itself unlawful.**"

Certainly the obvious inference from this provision is that if a Labor Union should, in furtherance of a conspiracy to restrain interstate commerce, in fact do **acts in themselves unlawful,** these funds thus appropriated were to be spent in prosecuting it **as an organization.**

The National Trades Union Act of June 29, 1886, (24 Stat at L 86) is to the same effect. Section 1 of this Act is as follows:—

> "SECTION 1. ('National Trade Unions' defined.) That the term 'National Trade Union', in the

meaning of this Act, shall signify any **association** of working people having two or more branches in the States or Territories of the United States for the purpose of aiding its members to become more skillful and efficient workers, the promotion of their general intelligence, the elevation of their character, the regulation of their wages and their hours and conditions of labor, the protection of their individual rights in the prosecution of their trade or trades, the raising of funds for the benefit of sick, disabled, or unemployed members, or the families of deceased members, or for such other object or objects for which working people may lawfully combine, having in view their mutual protection or benefit."

This Section aptly described the United Mine Workers of America as it now exists under its own peaceful and innocent description of itself.

Section 2 of the Act then goes on to provide that a National Trades Union, on filing its Articles of Association, may become a corporation, with the usual attributes incident to a corporation.

After incorporation under this Act a labor union would be a corporation "**organized and** existing under **and** authorized by the laws of the United States."

The Act of Congress requires, however, that a Trades Union, in order to become incorporated, must first **exist, as an association,** with certain attributes, specifically defined by the National Trades Union Act. It must, in order to be incorporated, be an "association" of working people with two or more branches formed for certain specific purposes, which purposes properly describe the United Mine Workers of America.

An association of workmen which immediately after incorporation would be a corporation organized under the laws of the United States, is clearly defined, before incorporation, as an **"association existing under the laws of the United States."**

Labor Unions, both before and after incorporation under the National Trades Union Act, are most aptly described by Section 8 of the Sherman Act:—

> "Corporations or associations existing under or authorized by the laws of the United States."

If the Union had incorporated, it was a corporation "authorized by and existing under the laws of the United States"; if it had not yet been incorporated, but possessed the attributes defined in Section 1 of the Trades Union Act as essential to incorporation, it was an "association existing under the laws of the United States" since it necessarily had to exist with distinct attributes defined by this federal law as a pre-requisite to incorporation.

It may be said that since the Trades Union Act, by Section 2, made incorporated unions liable to suit in their corporate name, this implied an absence of such liability in a union which was not incorporated.

As applied to an unincorporated union between 1886 and July 2, 1890, there might be something in this argument; indeed it would be unnecessary since we make no claim that at common law an unincorporated association, whether it be the United Mine Workers, the Joint Traffic Association or the Adams Express Company, is liable to suit in its associate name.

The Sherman Act, however, made an advance on the common law. Although it did not purport to make labor unions, or any other unincorporated associations, subject to suit in all legal proceedings, it did render such associations liable, in their associate capacity, to suit for the commission of the particular offense forbidden by this Act,—a combination or conspiracy in restraint of interstate commerce.

By Sections **1, 2** and **3,** it made it unlawful for labor unions to enter into such a combination or conspiracy.

By Sections 4 and 5 it gave the Federal Courts power to hale them into Court and to issue injunctions against them to prevent their violating the Act.

By Section 6 it made their associate property liable to forfeiture at the suit of the United States.

By Section 7 and 8 it made such associate property answerable to the suit of those whose business and property were injured by reason of the doing of the things forbidden by the Act.

Many other Statutes, both Federal and State, clearly recognize labor unions as existing thereunder, and give to them qualities and benefits not possessed by them at common law.

Thus the laws of 43 states, including Indiana, where the United Mine Workers has its principal office, and Arkansas, Oklahoma and Texas to which the jurisdiction of District 21 extends, as well as all of the other states in which the United Mine Workers maintains an active District organization, in 1914 had a statute known as the Trade Union Label Act, under which any trade union, whether incorporated or not, may register its Trade Union Label, the protection from misuse being provided for, either by fine or imprisonment, and in most cases (including Arkansas, see Act quoted, *infra*, p. 328 hereof) by a bill in equity **instituted by the Union itself** to enjoin the unauthorized use of the label.

The laws of 16 states, including 7 states where there are District Branches of the United Mine Workers, as well as Alaska, had, in 1914, statutes providing for a State Board of Conciliation which specifically required that one or more of the members of such Board should be appointed from "a labor organization" and a number of which provided that the submission to arbitration shall be signed on behalf of the employees by the "labor organization" to which they belong and which shall represent them in the proceedings, the Alaska Act subjecting the organization to damages if it ordered a strike while such an arbitration was pending.

In a number of these States the law requires the Commissioner to include in his annual or biennial report to the Legislature statistical details relative to "trades unions and other labor organizations and their effect on labor and capital."

The laws of many states make it a misdemeanor for anyone to wear or obtain aid by the unauthorized use of the button, badge or insignia of any "trade union".

Many States also have Statutes prohibiting employers from coercing their employees not to join or continue members of Labor unions. The possible unconstitutionality of such statutes would not appear to detract from their effect as a recognition by the State Legislatures of the present existence of the Labor Unions which they were designed to protect.

The laws of Canada, where as alleged in the answer (247,261) and as shown by the testimony (395) the United Mine Workers has one or more active District Branches, contain two statutes entitled "Trades Union Acts," which distinctly recognize Trades Unions as existing thereunder and which give to such organizations, even where not registered, rights and immunities not possessed at common law.

In order not to cumber the body of this brief, a tabulation of the most striking of such Statutes is given in an appendix (Appendix C, p. 327).

As a general rule, the individual members of an illegal combination of capitalists are financially responsible and available for suit, while the individual members of a labor union are not.

The question at issue in this case must not, however, for that reason be considered in its application merely to the particular form of unincorporated association known as a Labor Union.

Just as the Danbury Hatters presented the unusual case of the offending members of an unlawful combination of laborers financially responsible and in the jurisdiction, so the next case which arises under the

Act may be one of an unlawful combination and conspiracy of merchants, manufacturers or capitalists where the individual members are not available to suit and the only adequate remedy is against the collective property of the association.

Let us suppose that Canadian manufacturers to the number of a thousand or more, form an unincorporated Association—The United Manufacturers of Canada—to promote their mutual interests and welfare.

While not organized by virtue of any Canadian Statute, they, as they are authorized to do under the laws of Canada, adopt a constitution and elect a President, Vice-President, Secretary-Treasurer and an Executive Committee, authorized to employ subordinates and to spend the Association funds to promote the common interest of the members, such funds being obtained by dues and assessments.

Believing that the expanding business of a certain New York manufacturer is a menace to that of the Canadian merchants, the Association determines to crush him in order to prevent the further shipment of his goods to Canada and to various States in competition with those of the Canadian manufacturers.

Its officers accordingly open an office in New York and deposit $500,000 in a New York bank, half of which is used in various peaceful ways, such as underselling, bribery, etc., to injure his business, which methods being unsuccessful, the officers of the Association purchase rifles and dynamite, and hire and incite a mob, which destroys the New Yorker's plant and leaves him ruined.

None of the members of the Canadian Association have offices in the United States.

He accordingly sues the Association in the Federal Court, serving its delegated officers at its New York office and attaches the remaining $250,000.

Could it be for a moment doubted that the suit could be maintained and that the New York fund be made answerable for the damage done?

Plaintiffs-in-error ask, rhetorically on page 92 of their brief:—

> "Is it conceivable that in Montague & Co. *vs.* Lowry, 193 U. S. 38, an action could have been maintained against the Tile Mantle and Grate Association?"

An examination of the record in that case shows, however, that the action in that case was **in fact** maintained against that association and prosecuted to final judgment, **which was rendered against the association** and affirmed by this Court, the appeal bond to this Court having been executed by the association by its Secretary (See Transcript in the Supreme Court pages 88, 101 and 119).

Indeed the caption of that case in the District Court is Lowry *vs.* Tile Mantle & Grate Association of California, 98 Fed. 817; 106 Fed. 38.

Plaintiffs in error place great reliance on the decision of this Court in Elliot *vs.* Freeman 220 U. S. 178.

That case, however, is not only clearly distinguishable from the case at bar, but taken with the subsequent legislation of Congress under the Income Tax Amendment, presents a very strong authority for our position.

Elliot *vs.* Freeman involved the construction of the Corporation Tax of 1909, which levied a tax on

> "every corporation, joint stock company or association or insurance company now or hereafter **organized under** the laws of the United States or of any State or Territory or under the Acts of Congress applicable to Alaska or the District of Columbia."

This Court had held in Stone *vs.* Flint Tracy Co. 220 U. S. 107, 145 that this Act was not unconstitutional as levying a direct tax, since it was in reality an Excise Tax on the privilege of doing business in a corporate or quasi-corporate capacity, sustaining as reasonable

the classification of businesses conducted under an organization deriving powers from statutory authority.

In Elliot *vs.* Freeman the question was whether the Act applied to a Massachusetts Trust organized at common law, and which it did not appear had derived from a statutory source "any quality or benefit not existing at common law."

In view of the nature and purpose of the Act, and of the use of the words "organized under", this Court held that the Act was applicable only to such joint stock associations as were "organized under same statute or derive from that source some quality or benefit not existing at common law."

In the course of the opinion Mr. Justice Day said:

"It was the purpose of the Act to treat corporations and joint stock companies, similarly organized, in the same way, and **assess them upon the facility in doing business** which is substantially the same in both forms of organization."

The above construction gave effect to the plain language of the Act, preserved its quality as an excise Tax, and avoided the constitutional question which would have been involved had Congress, while not desiring to tax individuals or partnerships on the privilege of doing business, had attempted to impose such a tax on a form of organization not created or benefited by statute, but operating like individuals and partnerships, at common law.

This Court pointed out the "essential difference between a joint stock company as it EXISTS at common law, and a joint stock company having extensive statutory powers conferred upon it by the State within which it is organized."

In the case at bar the Act of Congress does not read, as did the Excise Tax Act of 1909, "corporations, joint stock companies or associations **organized under"** Federal and State laws, but "corporations and associations **existing under or authorized by"** such laws.

Furthermore, in the case at bar it appears that the organization and operation of the United Mine Workers is specifically **authorized by** the laws of a number of the States in which it maintains active District Branches, and that not only Acts of Congress but statutes of every State in which it carries on its activities, specifically recognize it as existing under such laws and give to it qualities, benefits and rights not existing at common law.

Elliot *vs.* Freeman was decided in 1911.

On October 3, 1913, Congress passed the first Income Tax Act (38 Stat. at L. 166).

The provision in this Act defining the corporations and associations subject thereto, is most significant.

Its language would indicate that in drawing it, the framers had the decision of Elliot *vs.* Freeman in mind and aimed to extend its provisions to all joint stock associations whether deriving their powers from statute or at common law.

The provision is as follows:

> "G. (a) That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year **to every corporation, joint stock company or association,** and every insurance company, **organized in the United States, no matter how created or organized, not including partnerships,**
>
> "but **if organized, authorized, or existing under the laws** of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year."

There follow provisos specifically exempting certain organizations, including labor unions.

The Act of September 8, 1916 (39 Stat. at L. 756), used similar language:

> "Sec. 10 (a) That there shall be levied, assessed, collected, and paid annually upon the total net

income received in the preceding calendar year from all sources by **every corporation, joint stock company or association, or insurance company, organized in the United States, no matter how created or organized, but not including partnerships,** a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the United States by **every corporation, joint stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country,** including interest on bonds, etc."

The significance of these provisions lies in the use by Congress of the words—

"organized, **authorized, or existing under the laws** of any foreign country"

in the second clause of the provision (which for convenience we have put in separate paragraphs.)

A critical examination of the first clause—

"every corporation, joint stock company or association, and every insurance company, organized in thd United States, no matter how created or organized, not including partnerships"

makes it clear, in view of its having been drawn following the decision in Elliot *vs.* Freeman, that it was intended to include joint stock associations organized at common law as well as such associations organized under state statutes or deriving powers therefrom. This is particularly evident from the specific exception of partnerships.

It is further to be noted that the first clause covers only such corporations and associations as are "organized in the United States" and the first clause would not

therefore cover a corporation or association organized in a foreign country. such a corporation or association being subject to tax solely by virtue of the second clause.

A joint stock association organized at common law in Massachusetts would therefore be liable to the tax.

If a similar association were organized in England and came to Boston to do business, it is inconceivable that Congress would not mean it similarly to be taxed. It could not, however, be taxed except by reason of the second clause, imposing a like tax on such an association "organized, **authorized, or existing under the laws** of any foreign country."

Unless, therefore, we are to indulge in the impossible assumption that Congress intended to tax a domestic common law joint stock association and exempt a foreign common law joint stock association doing the same business in the same way in the same block, we must conclude that the words "organized, **authorized, or existing under the laws** of any foreign country" as used in the Acts of 1913 and 1916, included joint stock associations formed at common law as well as those formed by statutory authority. It would seem entirely clear from the context that the words "organized, authorized, or existing under the laws of any foreign country" were intended to have as broad a significance as the phrase "organized in the United States, no matter how created or organized," in the previous clause.

This conclusion is fortified by the language of Section 13 (b) providing,—

> "The return (corporations, etc.) shall be made to the Collector of the district in which is located the principal office of the corporation, company, or association, where are kept its books of account and other data from which the return is prepared, **or in case of a foreign corporation, company, or association,** to the Collector of the district in which is located its principal office or business in the United States" etc.

In the latter clause, Congress evidently refers to the same foreign corporations, etc., as are taxed under the taxing clause and uses the word "foreign" as synonymous with "organized, authorized, or existing under the laws of any foreign country."

It will also be noted, (in connection with the contention of the other side that no procedure is provided to enforce the Sherman Act against unincorporated associations) that although the Income Tax Act provides a penalty of $10,000 against any corporation or association violating its provisions, the Act provides no procedure to enforce it, nor any procedure for such an association to recover back a tax or penalty erroneously assessed or paid, although the Association is clearly given such right.

The foregoing considerations are not affected, it is submitted, by the decision in Croker *vs*, Malley, 249 U. S. 223, which does not hold that the Act of 1913 is inapplicable to joint stock associations not deriving their powers from statute, but merely that the organization in question was not a joint stock association but a real trust.

Irrespective of whether or not Massachusetts trusts have, since 1909, received recognition from federal and state law and acquired rights and benefits from such laws, we believe that this Court would be slow to hold that the associate property of such an association, devoted to the injury of other persons in restraint of interstate commerce, would not be amenable to execution by a suit against the association in its associate name.

Both the United Manufacturers of Canada and the Massachusetts Trust would be subject to suit, in their associate names, under the Sherman Act, just as is the United Mine Workers of America.

Where it appears that the Association in question is one **"authorized by"** the statute law of states in which it carries on its activities and recognized as **existing** and given special rights and privileges by the statutes of the United States and of every state and territory where it does business, this merely fortifies the conclusion.

While none of such Associations were subject to suit at

common law, Congress, by the Sherman Act, has extended the common law to make them liable to suit, creating both a liability and a procedure to enforce it in the Federal Courts, similar to that created as to partnership associations by the Interstate Commerce Act,—to "charge the partnership assets with a liability and to personify the company so far as to collect a fine by a proceeding against it by the company name."

U. S. *vs.* Adams Express Company, 229 U. S. 381, 390.

All that is necessary to hold an association liable for damages under the Sherman Anti-Trust Act is to show its existence in some form sufficiently tangible to enable the Court by its process to reach its funds or property.

The existence of Federal and State Statutes recognizing its existence and giving it special rights merely makes its liability clearer.

It cannot take advantage of its associate and combined existence to harm other people in the manner forbidden by the Sherman Act, and use its associate funds for that purpose, and not at the same time have those same associate funds subject to the provisions of that Statute.

If the Association exists to do the damage, its associate funds also exist to pay for it.

On pages 88–90 of their brief, plaintiffs-in-error state and discuss the three reasons why they contend that the definition of "person" in the Sherman Act cannot be construed to include an unincorporated association.

(1) They argue that the use of the plural "laws" must be taken to mean "statutes."

To this we answer, first, that this is not necessarily so. The word "laws" has no such invariable significance as that suggested and must be read in each case in the light of the context and of the purpose of the Act in which it is found.

While the expression "organized under the laws" normally means "formed by virtue of the statutes," it is not true that "existing under the laws" also means "formed by virtue of the statutes."

It is submitted that the word "laws" in the Income

Tax Acts, above quoted, is used in a sense broader than "statutes."

Used in a remedial statute, intended to be sweeping and all-embracing in its scope, Congress intended by the phrase "corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state or the laws of any foreign country" to include every kind of combination which could be organized or exist in a form effective to restrain interstate commerce, no matter how or where formed or existing.

Congress might, as it did in the first clause of the Income Tax Act, have used the words "corporations and associations organized in the United States (or elsewhere) no matter how created or organized," in which case plaintiffs-in-error would doubtless still have urged the applicability of the maxim *noscitur a sociis*.

Instead Congress used the expression "corporations and associations existing under or authorized by the laws," etc., being the practically identical phrase employed in the proviso of the Income Tax law, which, as we have pointed out, Congress must have been intended to have exactly the broad meaning for which we here contend.

In the second place even if the word "laws" should be held to mean "statutes," still this association is directly within the definition, since, as we have shown, the statutes of several of the states where the United Mine Workers have active branches specifically **authorize** the formation of labor unions, and the statutes of all such states as well as the Clayton Act and other Federal statutes specifically recognize labor unions as **existing** thereunder, and give them rights, benefits and qualities which they would not possess but for such statutes.

(2) It is next assumed that our construction of this provision makes the phrase under discussion synonymous with "lawful corporations or associations," which, it is said, would exclude the very unlawful combinations against which the Act was designed to give a remedy.

As a practical matter it is hardly conceivable that any association could be formed which would not have some lawful purpose to justify its organization and existence, provided the organizers did not divert its activities to the attainment of some other object or use unlawful methods. The suggestion of the other side is really academic.

The phrase associations authorized "existing under or authorized by the laws, etc." is not, however, synonymous with "every lawful association" any more than "corporations organized under the laws" means "every lawful corporation."

We do not regard the definition in Section 8 as referring in any way to the **manner** in which the corporation or association is acting—whether lawfully or unlawfully It does not mean "corporations and associations lawfully organized or lawfully existing" but corporations or associations no matter **what be the legal procedure employed in their formation.**

If a Mexican corporation organized by Villa in Juarez in defiance of the law and for an illegal purpose, came over to El Paso and burnt up cars in transit to other States, could its funds in an El Paso bank escape liability on the ground that it had not been lawfully organized?

Just as no legal subterfuge can be devised to evade the prohibitions of Sections 1, 2 and 3, so also if the association actually exists as an effective unit it is liable no matter what legal process was used in its organization.

Certainly the Circuit Court of Appeals did not mean, by referring to the fact that Labor Unions were not outlaws, to imply that the United Mine Workers had been acting lawfully at Prairie Creek, but merely that it was within a class of associations—labor unions—which had been recognized by the Clayton Act as lawfully existing, having a right to exist under the law.

The test of liability is not the correctness of the particular legal procedure by which the corporation or association attained the organization enabling it to restrain interstate, but merely whether it has in fact been organized, no matter where or by what legal pro-

cess, and **actually exists** in a form sufficiently powerful to do the forbidden thing, and sufficiently tangible to be subject to the remedy against its associate resources.

In the case at bar, also, no matter what test be applied, the defendants are well within it.

(3) It is suggested that our construction of the phrase makes the words "existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country," *surplusage*.

If, however, these words had been omitted, if the phrase had been simply "corporations and associations" without the qualifying phrase showing that unincorporated associations were intended as well as those having the attributes of corporations, there would have been considerable force in the argument *noscitur a sociis*. It is these very words which are the conclusive answer to the application of that maxim in this case.

The construction suggested by the other side would make the important words "or existing under" surplusage.

The decisions cited on pages 109–110 of the brief of plaintiffs-in-error were cases where personal judgments were sought against individuals who had not directly participated in the conspiracy. In the case at bar we are merely seeking to hold the fund delegated to the associate officers to carry out the objects of the Association.

Finally, plaintiffs-in-error rely on the provision in Section 7 that the action shall be brought "in the district in which the defendant resides or is found."

Certainly any one who was at Prairie Creek during the spring, summer and fall of 1914 would have had no difficulty in realizing that the United Mine Workers of America was found there in full force.

At the time defendants destroyed plaintiffs' business and property in 1914 and at the time this suit was brought, the United Mine Workers had an active District Branch in Arkansas, with an International Board Member for District 21, James Mullen, living at Midland, Arkansas, three miles from Prairie Creek, whose duty it was to attend to the business of the Union in that District.

The writ in this suit was served on the National Officers when they were in the Western District of Arkansas attending to its business and supervising its associate activities which were being carried on in that District. How the United Mine Workers could have been any more tangibly "found" in Arkansas if it had been a corporation we cannot imagine.

It has been shown in the case at bar, both from the United Mine Workers Constitution and Convention Proceedings, and from the practical workings of its organization, that this organization is so constructed as to present an extraordinary example of efficient and centralized power.

It claims that it is free to use all its vast resources and employ all its tremendous power, without responsibility. **There is no man or body of men whose intelligence or whose character will stand absolute power,—power without responsibility.**

If the wisest men of history have been unable to withstand the temptation to abuse such power, is it to be expected that it can safely be entrusted to the Labor Unions, composed so largely of ignorant men, easily swayed by demagogic influences?

> **"If a State, with its recognized powers of government, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess?"** *In re* Debs 158 U. S. 564,600.

While labor leaders, in order to secure support for re-election by the radical element in their ranks, must needs claim and fight for freedom from responsibility for their organizations, such of them as really have at heart the ultimate welfare of their class would doubtless be glad to have this unscrupulous element realize that their development must be effected in subordination to the rights of the community.

Far seeing men must understand that the capacity of the Labor Unions for usefulness to their members and to the country, far from being hampered, will be greatly

enhanced and prolonged if, with their enormously waxing membership, wealth and power, they are compelled to accept a degree of responsibility for wrongdoing.

The laboring class can never really prosper without the confidence of the rest of the people.

Now that it has come to act as a group it can never secure that confidence until it assumes group responsibility.

It is believed that when it comes time to write the history of the Labor Movement from 1920 to 1930, no legislation by Congress will stand out as wiser than the inclusion in the Sherman Act of **every** combination, whether of laborers or of others, and the creation of a procedure to make the associate property such a combination liable for the unlawful injuries it inflicts.

Such is the first step toward the realization by the Labor Unions of full social responsibility, which can never be attained while they and their resources are exempt from the legal liability for injuries unlawfully inflicted by them.

The purpose of the Sherman Act was to put a stop to and to give an effective remedy for the obstruction of interstate commerce by combinations, whether of individuals, of corporations or of associations.

Neither the prohibitive nor the remedial provisions make any exception, either as to the classes covered, the kind of combination forbidden, or the type of organization responsible.

No arrangement can be contrived which is effective to attain the forbidden result and which is beyond the reach of the law to restrain and disintegrate; nor can any association, however organized, in fact exist in a form able to employ its associate funds, its organization, its trained officials and its combined existence and collective power effectively to inflict injury and destruction to the business and property of those engaged in such commerce, without these same funds becoming available, under the remedial provisions of the law, to satisfy such injury.

If the Association exists to cause the injury provided for by the Statute, its Associate Funds also exist to pay for it.

THIRD.—**The Procedure Employed in Bringing Defendants into Court was both Derived by Clear and Necessary Implication from the Sherman and Clayton Acts, and is that Prescribed by the Arkansas Code.**

On pages 79–83 of the Brief of Plaintiffs in Error it is argued that Congress, by the Sherman Act provided no procedure for bringing an unincorporated labor union into Court or for subjecting its associate funds to liability.

Our answer to this position is two-fold:—

In the first place, as held by the Circuit Court of Appeals, such a procedure is necessarily implied from the Sherman Act itself.

As said by Judge Adams (235 Fed. 1, 6):—

> "If we are correct in our view that voluntary unincorporated associations are included in the word 'associations' as used in Section 8, above quoted, then we are of the opinion that there is a clear and necessary implication that the association may be sued in its own name; otherwise the provision in the law that the association should be liable could not be enforced. and the law would fail as against all such associations, the remedy of the injured party being confined to an action against the mere agents and employes of the association, in most cases unable to respond in damages."

But even if there were no such necessary implication from the Sherman Act, the procedure employed is that prescribed by the Arkansas Code, which under the Conformity Act, properly regulates the form in which actions in the Federal Court, sitting in Arkansas, shall be prosecuted.

Section 7446 of Kirby & Castle's Digest of the Statutes of Arkansas, page 1739, is as follows:—

> "Where the question is one of a common or general interest of many persons, or where the parties

> are numerous and it is impracticable to bring them all before the Court within a reasonable time, one or more may sue or defend for the benefit of all."

The above provision evidently prescribes the procedure to be employed in a suit by an unincorporated trades union to enjoin the improper use of its union label, (see Appendix C. p. 328 hereof) no specific procedure being provided by the Arkansas Trades Union Label Act.

From the Third Amended Complaint on which this suit was tried (Record 179 to 201), it is entirely apparent that the question involved was one of a common or general interest of many persons as regards the liability of the defendant association, and in paragraph six of the Complaint (page 183), it is specifically alleged that the membership of the Union exceeds 400,000 miners.

The defendants named in the writ include, in addition to the individual defendants, the United Mine Workers of America, John P. White, as President of the United Mine Workers of America, Frank L. Hayes, as Vice-President of the United Mine Workers of America, William Green, as Secretary-Treasurer of the United Mine Workers of America, James Mullen, as National Executive Board Member of the United Mine Workers of America, Tom King, as Board Member of the United Mine Workers of America, District No. 21 United Mine Workers of America, P. R. Stewart as President of District No. 21 United Mine Workers of America, William McLaughlin as member of the Executive Board District No. 21 United Mine Workers of America, and Edward Cunningham as President District 21 United Mine Workers of America, as well as the different local unions specified.

Paragraph 10 of the Complaint, found on page 184 of the Record is as follows:—

> "That John P. White is president of said United Mine Workers of America and that because of the

numerous members of said United Mine Workers of America it is impossible to make each one a party defendant to this cause, but that said United Mine Workers of America is represented in its District 21 by P. R. Stewart formerly president and William McLaughlin, a member of the executive board of District 21 or president thereof, Edward Cunningham as vice-president or president thereof, Tom King, a member of said executive board, James Mullen, a member of the executive board of the United Mine Workers of America, and Frank L. Hayes, vice-president of said United Mine Workers of America, William Green, Secretary and Treasurer thereof; that James Mullen is the agent of said United Mine Workers of America for the transaction of all business by said organization in the State of Arkansas and resides in the town of Midland; and the plaintiffs allege that said defendants sufficiently represent the United Mine Workers of America for the purpose of this action, and that the service of process upon them and the trial of the suit in which they are parties will constitute proper representation of the United Mine Workers of America."

It is therefore apparent that the suit, which was one where the question was of a common or general interest to many persons and in which the members of the Union were not only numerous but innumerable, was brought against the Union in its Union name and against all the principal officers in their capacity of officers as representing the Union.

In paragraph 30 of the complaint (Record 200) it is alleged that the United Mine Workers and its representatives had no property known to the plaintiffs except certain funds described in said paragraph, upon which allegation writs of attachment and garnishment were issued against the United Mine Workers of America and its representatives and the funds garnished and the

various garnishees answered, in which manner funds of almost $50,000 were attached. The service of the writs of attachment and the answers of the garnishees appear on page 16 *et seq.* of the record.

After Judge Youmans had sustained the demurrer to the original complaint on the ground that it did not present a case involving a restraint of commerce, the United Mine Workers of America appeared and had the writs of attachment and garnishment dissolved and the garnishees discharged, to which the plaintiffs saved due exception and took an appeal, which the Circuit Court of Appeals reversed and remanded the case for further proceedings.

After the trial and judgment for the plaintiffs, a supersedeas bond was entered by the United Mine Workers of America, making it unnecessary to pursue the garnishment proceedings further.

In the Circuit Court of Appeals, in the hearing on demurrer, both the National Organization and District No. 21 made motions to dismiss on the ground that the writ of error should have been to this Court, and, after the case was remanded to the District Court, they all answered, which in effect amounted to a general appearance and a waiver of any defect of process.

Ferguson *vs.* Carr, 85 Ark. 246, 252, and cases cited.

Dunbar *vs.* Bell, 90 Ark. 316.

Lowry *vs.* Tile Mantel and Grate Assn., 98 Fed. 817.

While the defendant has made frequent objections on the ground that it was not an entity or suable under the Sherman Act, the record does not disclose that it has ever objected to the service of process on it in the name of its representatives as prescribed by the Arkansas Code.

Branson *vs.* Industrial Workers of the World, 30 Nev. 270, 95 Pac. 354) was a suit against the I. W. W. for damages by a conspiracy to boycott plaintiff's business, the service having been made on the I. W. W. under

the Nevada statute similar to Section 7446 of Kirby's Digest above quoted. The lower court dismissed the case, holding that the suit could not be maintained against the Association, but the Supreme Court of Nevada in a well-reasoned opinion reversed the lower court and sustained the suit, saying in reference to this provision:—

> "Under our code provision, there is but one form of civil action, and legal and equitable distinctions, so far as practice is concerned, are largely, if not entirely done away with. To hold that the defendant organization (labor unions) cannot be sued without including all members, which are so numerous, scattered and difficult to ascertain, might cause such hardship and delay as would amount to a denial of justice. It is hard to conceive of any case to which the statute would be more applicable in its provisions that where the parties are numerous one or more may sue or defend for all."

The above passage is quoted with approval in Martin on the Modern Law of Labor Unions, Section 218.

This decision was followed in St. Germain *vs.* Bakery and Confectionery Workers Union No. 9 of Seattle, 97 Wash. 282, which was a common law action for damages against a labor union. The Court held that the service and the suit against the defendant in its associate name was sustained under a code provision similar to that in Arkansas, saying (page 294):—

> "In the decree, the costs were awarded against certain of the respondents, but not against the unions, which were really the instigators, and controlled the picketing, and caused the damage in the case. It is argued by the respondents that costs cannot be awarded against the unions, because the unions are not incorporated bodies, but are mere voluntary associations. It is alleged in the complaint that these unions are voluntary organizations, that the membership thereof is in the neigh-

borhood of 500, and is so large that it is impracticable to bring all the members thereof before the court, and the officers, therefore, only, are made parties, without bringing all of the members of the unions before the court. In the case of Branson *vs.* Industrial Workers of the World, 30 Nev. 270, 95 Pac. 354, a Nevada case, it was held that, in an action in equity against a voluntary unincorporated organization, where the members comprising the same were numerous, such organizations might be made parties to an action, where a few of the members thereof were made defendants for the purpose of representing the organization, and, in that case, it was held proper to enter judgment against the organization, as well as against the individual parties who were named as defendants in the case. That case is a learned discussion of the question, and, we think, is conclusive. It became the duty of the court, therefore, to enter a judgment for damages and costs against all of the respondents."

"The judgment appealed from is reversed, and the cause remanded, with instructions to the lower court to grant an injunction, as prayed for, against all of the respondents, and against all other persons acting by, through, or under them, and for nominal damages, and for the costs in this court, as well as in the court below."

Penny *vs.* Central Coal & Coke Co., 138 Fed. 769, is a well considered case where the Circuit Court of Appeals for the Eighth Circuit sustained a suit by representatives of a church association on behalf of the church, under the Arkansas Code.

In that case the Coal Company had undertaken to mine a valuable seam of coal under lands owned by the church, an unincorporated association, and the suit was brought for the value of the coal. The defendant raised the question that the suit could not be maintained without making all the members of the church parties but the court overruled this contention, saying:—

"Surely, it must be conceded that it is a question of common or general interest of many persons composing the congregation of a religious society that a coal mining corporation should, unbidden, come and burrow beneath their house of worship and the graves of their dead, for coal, and cart it away. As the worshippers of such a society are generally numerous and changing, constantly coming and going, rendering it difficult, if not impracticable, to obtain the names and the consent of such a conglomerate mass, composed of men, women, adults and minors, to join in such an action as this, the situation certainly brings the case within the scope of the statute, enabling the acting trustees of the society to its use, to maintain the action of trespass for such a wrongful entry upon and spoliation of its property. This statute, in its pertinency to the instance of a church congregation, does not give legal recognition to the generally known fact that the temporalities of a religious organization are customarily committed to the care and direction of one or more trustees."

In Tinkler *vs.* Powell, 23 Wyo. 352, the Supreme Court of Wyoming sustained a suit brought by Tinkler as President of Local Union 2616 of the United Mine Workers of America, to recover from the treasurer funds belonging to the Union.

As we have heretofore stated, we do not contend that the judgment rendered below is a personal judgment against the individual members of the United Mine Workers of America or binds the real estate of a miner in California or Pennsylvania who had no actual part in the Paririe Creek strike and who is not specifically named as a defendant in this suit.

The provision in the Code or Arkansas merely removes the difficulty of getting the Union into court in its associate capacity. Whether, as we believe, it is suable in its associate name, or whether it should be sued in the

names of its officers as its representatives, is immaterial, since both are named in the writ and caption in the present case.

The code procedure of Arkansas is not new to the law. For many years it has been the practice in equity to bring in numerous defendants having a common interest by suit against some as representatives of all.

See Evanson *vs.* Spaulding, 149 Fed. 913, 150 Fed. 517.

Smith *vs.* Swormstedt, 57 U. S. 288, 302.

Jensen *vs.* Cooks' & Waiters' Union of Seattle, 81 Pac. 1069, 39 Wash. 531.

Willcut & Sons Co. *vs.* Bricklayers B. & P. U. No. 3, 85 N. E. 897, 200 Mass. 110.

Reynolds *vs.* Davis, 189 Mass. 294.

Russell & Sons *vs.* Stampers & Gold Leaf Local Union No. 22, 107 N. Y. Supp. 303.

Auburn Draying Co. *vs.* Wardell, 227 N. Y. 1.

U. S. *vs.* Coal Dealers' Assn. 85 Fed. 252.

Pearson *vs.* Anderburg, 28 Utah, 495.

Fitzpatrick *vs.* Rutter, 160 Ill. 282.

The Code provision merely applies the long standing rule in equity cases to cases arising at common law.

The cases cited by the other side are all suits at common law in jurisdictions where the procedure had not been modified by statute so as to permit a suit against a large association in the name of certain representatives.

FOURTH.—**The United Mine Workers of America, Acting through its National Officers and its Official Journal, as well as by its Duly Constituted District and Local Branch Agencies and Officers, Authorized, Caused, Participated in, Encouraged, Ratified and Approved the Destruction of the Business and Property of Defendants-in-Error.**

The whole case of plaintiffs-in-error for the exemption of the National Union for acts of its members is built up around a misconstruction of Section 2 of Article XVI of the National Constitution.

By this provision, which we have heretofore analyzed (*supra* pp. 26–31) the District Branches are given authority to **"order"** local strikes on their own responsibility and are required to get the sanction of the National Executive Committee to such strike only in case they seek aid from the National Treasury.

In discussing this provision, plaintiffs-in-error first substitute "conduct" for "order" and then contend that it relieves the National Association from liability for local strikes.

The word "responsibility" is used, however, as the context clearly shows in the sense of "liability," and not of "initiative."

In this clause there is obviously no attempt to limit the liability of the National Association **to third parties,** but merely to provide that **as between the principal and the agent** the latter could expect no funds other than those collected from District 21 unless the National Executive Board sanctioned the strike.

In the case at bar there is ample evidence that this strike was sanctioned by the Executive Board.

On May 4th, the first meeting after the strike was called, White reported to the Board, with approval, the flagrantly unlawful means that had been taken by the Local Officers on April 6th to prevent the operation of the mines, at which meeting Mullen, the District 21 representative, was present. The Board accepted the report and took no action of disapproval. Instead, White

went to the District 21 convention at Fort Smith on May 18th and made a fiery speech encouraging the local membership to continue their efforts to prevent the extension of the open shop.

> **"We have watched your struggles** with a good deal of **pride and satisfaction** and have admired you for the **splendid fighting qualities** that you possessed." * * *
>
> **"You cannot keep this movement half slave, half free.** The fight belongs to the organized miners to make. You who have tasted of the fruits of this movement and found out its benefits as compared with the conditions of the past, know that the great brunt of this battle must of necessity fall upon your shoulders, to free these fellow-workers in the non-union fields of this country."

Even therefore if the Constitution had required the sanction of the Executive Board to the institution of a Local Strike, such sanction was amply evident.

The Constitution, however, gave specific authority to District 21 to order such a strike on its own initiative.

Instead of limiting the authority and discretion of the Districts as plaintiffs-in-error contend, this provision clearly enlarges it.

The decision of the House of Lords in Denaby & Cadeby Main Collieries, Ltd., *vs.* Yorkshire Miners Association (1906) Appeals Cases 384, relied on by plaintiffs in error, is clearly distinguishable.

This was a suit for damages for inducing plaintiff's employees to strike without notice in violation of their agreements which required them to give two weeks' notice before stopping work. The Lord Chancellor specifically states at page 393:—

> "No unlawful methods were used by the defendant association or sanctioned by it."

The constitution and rules of the Union provided that no strike should be called except with the vote of a given

majority of the members and after taking certain prescribed steps to avoid it.

The strike in question was called by two district officers without the required vote or conciliatory measures being taken. As found by Lord Davey, these "local leaders acted on their own impulse and did not purport to act on behalf of the association or for the benefit of the association. * * * Both the officials and the general council of the association repudiated the action of the local branches as soon as they heard of it" (page 397).

In the case at bar, District 21 had specific authority in the national constitution to order the strike without any vote or without the sanction of the National Executive Board.

While it did not affirmatively appear that the District President and Secretary forwarded a written statement to the International President and got his decision before taking "final action" in this strike as provided by the District Constitution, it does appear that Stewart, the District President, and Mullen, the District International Board member, were in Kansas City with John P. White, the International President, from April 4th, when the Prairie Creek mine started open shop, until April 8th, two days after the riot of April 6th; that on April 8th Stewart and Mullen came to Fort Smith on Union business, stayed two days and then went back to Kansas City, where White still was; that an approving account of the riot was published in the official journal, which the constitution required to be read by every local secretary throughout the country; that at the next Executive Board Meeting on May 4th, at which Mullen attended, White graphically reported to the Board the assault which the Union men had made on the Company employees, resulting in the triumph of the Union cause, in whose name the acts had been done, the hoisting of the Union flag on the tipple, the exodus of all the employees, the flooding of the mines and their subsequent idleness and the cessation of the shipment of coal; that

on May 18th White came to a convention of District 21 at Fort Smith and made a speech encouraging the men to continue their fight against the open shop; that subsequently the Union through its District Branch bought high powered rifles and engineered the attack on the property resulting in its destruction, all of which was approved and applauded by the Official Journal of the National Association, **not only after its occurrence, but while it was still going on.**

In the Denaby case it appeared that after the men went out they were ordered back by the Executive Council, but when they applied for work they were required to sign new contracts having in them clauses to which they objected, and that for the latter reason, solely, they refused to go to work.

It was held that the fact that they were given strike pay during the subsequent period did not amount to a ratification of the original strike, since the cause of their being out when receiving such strike pay had no relation to their original cessation of work in breach of their contracts.

This essential circumstance and reason for the continuance of the strike is not mentioned in the analysis of the case by plaintiffs-in-error.

On page 103 of their Brief they state that it does not affirmatively appear in the case at bar that the association granted benefits to the strikers.

This does appear on pages 2470–2471 where the treasurer's report shows payments to the Local Unions participating in this strike, of more than $20,000, paid from, the Defense Fund, which under the Constitution (Record page 2842, Article X, Section 1) can be used only fo this purpose.

Without going over again all the testimony summarized on pages 125–161 hereof, it clearly appears that the Union, through its Officers, its Executive Board, its Official Journal and by vote of all the delegates at its National Convention, officially recognized that the destruction of plaintiffs' property and business had been brought about

by the Union, through its officers, members and representatives, in order to carry out its aims, objects, and purposes, and that it accepted the benefit to the Union from the suppression of the open shop mine and ratified the whole proceedings in as unmistakable a manner as it would be possible to imagine.

It is probable that there will never again be an important suit against a labor union in which as conclusive evidence can be produced as is contained in this record.

The Union officials were so sure that, no matter how flagrantly they violated the law, neither the Union nor its associate funds could be held liable, that they boasted with brazen candor, of their success in crushing an operator who dared oppose them.

A number of English cases, decided between the decision in the Taff Vale case (1901 A. C. 426) and the passage of the Act of Parliament which annulled it, are instructive on the question of the liability of the National Union for the acts of its District and Local Branches.

In the Taff Vale case itself it appears that in the lower Court it was contended by the Union that the local organizing secretaries who had charge of the strike, had acted outside of their authority.

Lord Justice Farwell held that although the National Union, the principal, had not authorized the particular acts, it had put its agents in a position to do them and was liable for what they did in the course of their duties (see 1901 A. C., p. 433).

This question was not discussed in the House of Lords, although the liability of the Union was sustained.

In Giblan *vs.* National Amalgamated Laborers' Union (1903) 2 K. B. 600, the plaintiff was a former member of the Union who owed it £20, which the Executive Committee directed the Secretary to take steps to collect.

The Constitution of the Union providing for strikes, but did not authorize a strike to collect a debt.

Giblan was expelled by the Union and later the General and Local Secretaries threatened Giblan's employer to

strike the men he was working with unless he was discharged.

On his discharge for this reason, he sued the Union, which contended that the acts of the two secretaries were beyond their power and *ultra vires*.

The Court held that the Union was liable.

Lord Justice Vaughan said that the acts of the two secretaries were **"not** *ultra vires* **the Union but only of its officers,"** and since the Union in general meeting had adopted such acts and **taken the benefit of them,** it was liable.

Justice Stirling referred to the well known principle of law that the master is liable if the act is done in the course of his duty and for his benefit although there be no express command or prior authority. He held that under the Union Rules it was the duty of the Executive Committee to protect its funds, that the Secretaries were endeavoring to attain an end which they had been directed to attain, and the fact that they did it in an improper way did not relieve the Union from liability. He suggested that perhaps a member could have enjoined them from declaring a strike to collect the debt, but held that this consideration did not control the question then before them, which involved third parties.

The application of this decision to the case at bar is too obvious to require comment.

In Mackendrick *vs.* National Union of Dock Laborers in Great Britain and Ireland, 48 Scot. L. Rep. 17 (1910) (Court of Session), the facts were as follows:—

Defendant was a Trade Union, registered in England and a copy of its rules recorded in Scotland under the Trade Union Act of 1876, Sec. 6. It had a Branch at Glasgow, Branch No. 12. The President and Secretary of this branch by letter appointed plaintiff as its law agent, with a free hand to deal with all cases. It stipulated that while the direct relation of agent and client should subsist between plaintiff and each injured party, "we

guaranty the costs incurred by you in the event of your fighting a case unsuccessfully."

In an unsuccessful case the cost were £425 and the injured man was unable to pay. Plaintiff sued the Main Union.

The organization of this Union was remarkably similar to that of the United Mine Workers.

The Union Rules or Constitution provided for its government by an "Executive" elected by a congress of Branch representatives.

Rule XII (10) of the Union provided that "Branches may advance money to assist any member to enforce his legal claims" for occupational accidents, etc., but "no money shall be advanced under this rule until all the available evidence bearing on the case has been laid before the Branch Committee and a copy supplied to the Executive," which might veto branch decisions to spend money on such cases.

Rule XIV (3) provided:—

> "No person shall have power to incur any financial responsibility, or transact any business in the name of the branch of the Union, unless with the special authority of the Branch or of the Branch Committee."

Rule XVI (1) provided that the Branch funds, should be the common property of the Union; ' Branches seceding from the Union or being dissolved shall forfeit all claims to the funds of the Union."

The answer admitted that branches were empowered to employ law agents but denied that the Branch was an agency of the Main Union, **defendants alleging that the Branch had its own organization and made its own disbursements.**

It appeared that after the employment of plaintiff, the General Secretary of the Union knew and approved of it and of its terms (pages 25 and 27).

The funds of the Union were derived from an assessment of 3 pence per week from each member, one-half penny of which was remitted to the Main Union and

"the remainder, in addition to interest on accumulated capital to be retained by Branches for general fund and burial benefits subject to legal demands of the Executive."

The lower Court, in discussing the Union Rules said:—

> "The unit of membership of the union is the individual and not the Branch, though it is, *ipso facto*, as member of the Branch that the individual becomes a member of the Union. The individual dock laborer is a member of the Branch, and as a member of the Branch a member of the Union.
>
> "But there is, notwithstanding, another result of the rules or incident to the Constitution, viz., that the local combination or Branch, though under control of the Union, has a large administrative independence. The situation created is somewhat of an *imperium in imperio*" (p. 18).

Lord Cullen said (p. 22):—

> "The active life of the Union is in the Branches, each of which, in its particular area, carries on the business of the Union, subject to such central control by the Executive as the Rules prescribe."

The lower Court dismissed the action on the ground that although the obligations of the Branch competently undertaken were the obligations of the Union, and though the Branch had power to advance members money to defend their claims, it had no power to bind the Union to the indefinite liability here involved, which was *ultra vires* the Branch.

This decision was reversed by the Appellate Court, which held the Union liable.

The Court held that the power given the Branch to employ a law agent included the responsibility to pay him for the work which he did.

The Lord Justice Clerk said (p. 24):—

> "I can see no ground for holding that where a Branch acts in accordance with powers conferred, by

appointing an agent for litigious work, the person so employed has not a basis for claim against the Union for his remuneration. **Any business that a Branch carries on is business of Union, subject to the control and direction of the Executive of the Union.**

* * * * * * * *

" It is further not to be left out of view that in this particular case the evidence discloses that the Executives, if they thought they had the power to stop or intervene in Bowden's case, could have intervened. For it is, as I think, established that their general secretary was perfectly well aware of the pursuers' appointment to be Branch law agent, and also of the proceedings which were being taken in Bowden's case and that **no exception was taken either on grounds connected with the rules or on any other ground to what was being done."**

A decision by the Circuit Court of Appeals for the Ninth Circuit clearly illustrates the liability of such an Association for the acts of the District or Local Branches created by it as instrumentalities to carry out its purposes.

Spaulding *vs.* Evenson *et al.*, 149 Fed. 913, 150 Fed. 517, was a bill for an injunction brought by an Iowa wagon dealer to restrain defendant, the Inland Empire Implement and Hardware Dealers Association, and its officers, from interfering with plaintiff's business of selling buggies and wagons in Eastern Washington.

It appeared that the Hardware Dealers' Association was composed of some 166 local hardware dealers, some of whom sold buggies and wagons and some of whom did not. At a meeting of the Association there was formed a subsidiary association known as the Peddlers' Association, to which members of the Hardware Association subscribed in varying amounts, and the funds of which were to be used by a committee of three to prevent sales of ranges or vehicles by non-resident dealers.

This committee or its agents had interfered by various means with plaintiff's salesmen whenever they attempted to solicit business in Eastern Washington.

In the lower Court Judge Whitson granted the injunction against the Hardware Association, despite its contention that the illegal activities complained of were committed not by it but by the Peddlers' Association, the Court holding that the latter was but the creation and instrumentality of the Hardware Association.

The decree was affirmed by the Circuit Court of Appeals. Paragraph 4 of the syllabus is as follows:

> **"Where a voluntary association creates a subsidiary or branch association as an instrumentality through which to accomplish certain purposes, it is liable for the acts of such subsidiary association to the same extent as though such acts had been done by the entire membership."** (150 Fed. 517.)

See also U. S. *vs.* American Co., 263 Fed. 147, 152.
Nederlandsch S. M. *vs.* Stevedore's L. B. Society, 265 Fed. 397.

In a number of cases decided by this Court holding corporations liable for criminal torts the defense has been raised that the acts were *ultra vires*.

In these cases the Court recognized the development of the law which has taken place in the extension of corporate liability for acts, which, while not strictly within the corporate power, or within the express authority of the agent who committed the unlawful acts, were within the scope of the agent's employment, and were done on behalf of and for the benefit of the principal, even though against his express orders.

In these cases all the present contentions of plaintiffs in error as to *ultra vires* and to the alleged limitations in the Union Constitution of the authority of the Branches, were fully considered and finally disposed of.

Salt Lake City *vs.* Hollister, 118 U. S. 256, 260.
Denver & R. G. R. Co. *vs.* Harris, 122 U. S. 597.
Washington Co. *vs.* Lansden, 172 U. S. 534, 544.
New York Cent. R. Co. *vs.* U. S. 212 U. S. 481, 492.
Joplin Mercantile Co. *vs.* U. S., 213 Fed. 926.
In re Grand Union Co., 219 Fed. 353, 363.
U. S. *vs.* Nearing, 252 Fed. 223.

Effect of the Failure by the National Officers to Take Action.

If it were necessary to this case we believe that this Court would sustain the liability of the National Association without regard to the conclusive evidence of prior authorization, encouragement, participation and express ratification.

We are confident that this Court will adopt the rule which has been laid down by the Federal Courts in practically every Circuit, that where Union officers and members, over whom the Union has disciplinary control, in the course of a strike, do illegal acts in furtherance of the Union cause, the fact that the Union takes no affirmative and public action disapproving what they have done and suspending or expelling them from membership, is of itself the strongest kind of evidence that the acts were really authorized or connived at by the Union and that they were done in its behalf and for its benefit.

Before discussing these decisions, however, we desire to point out again that the evidence in this case conclusively sustains the liability of the Union on four distinct grounds. This statement is no afterthought. The case was tried and the evidence presented on this theory (see Record p. 621).

(1) The Constitution authorized the District to call this strike.

Plaintiffs further offered to prove that the National Organization, both through its Convention proceedings, and through editorials and articles in its Official Journal, had for years before 1914 had not only encouraged its membership to suppress open shop operations but by recounting, often with express approval, usually without disapproval, and always without disciplinary action, illegal methods used in other Districts to accomplish this result, had sanctioned the use of such methods in carrying on its strikes.

These offers included among others an article by the President of the Union recognizing that violence always

attends strikes of any magnitude (626), accounts of intimidations of proposed open shop operations (630), an acknowledged policy of the Union to disobey injunctions in labor disputes (632), advocacy of bullets rather than prayers (632) and of the policy of taking the enforcement of the law into their own hands (633), accounts of combats between the strikers and the militia with advocacy of violent methods, absolutely incompatible with any idea of self-defense (633–34–35); open advocacy of violence in connection with the West Virginia strike (636–37–42).

Certain of the articles offered from the Journal of April and May, 1914, relative to the Colorado strike, gave an enthusiastic account of hundreds and even thousands of miners marching in battle array against the Colorado Militia and the conquest of these mines with considerable loss of life and enormous destruction of property.

All this evidence was objected to by the defendants and was ruled out by the trial Judge on the ground that in spite of the broad allegations of conspiracy in the complaint (paragraph 22 Record pp. 191 to 192) the plaintiffs were not entitled to show, by extracts from the Official Journal relating to other strikes during the period immediately preceding that of the Prairie Creek strike, that the National Union had openly advocated the use of illegal and violent methods to its members and had thereby completely authorized and encouraged them to use the same methods in their local strikes conducted by its various District Branches.

With all respect to the learned trial Judge, this ruling was clearly erroneous, and as it was made in the instance of defendants, they clearly cannot now base any contention on the absence of such evidence in the Record.

In Missouri, K. & T. Ry. Co. *vs.* Elliott, 102 Fed. 96, 103 Judge Caldwell said:

> "The rule is well settled that when the plaintiff offers and is ready to produce competent evidence to prove a material fact in issue, and the Court

> erroneously rejects it on the objection of the defendant the defendant will not afterwards be heard to say that the plaintiff failed to prove the fact which the rejected evidence would have established. The defendant will not be allowed to take advantage of his own wrong, or the errors of the Court induced on his own motion, and compel the plaintiff to suffer the consequences."

Aside from the rejected items, however, the Record contained ample evidence to the same effect (see as to Irwin 1060, 1061; as to West Virginia 589, 1118, 1131, 1135–1140, 1145, 1146; as to Colorado 568, 1047, 1136–1140.)

What kind of purely legal activities was McDonald, a Union delegate, talking about when he said, in the Joint Convention of 1912 (Rec. 1118)?:

> **"We have had men to go to jail. We expect that more of us will go to jail. The penitentiary doors have no terrors for us, as far as that is concerned. And if putting two or three hundred of our men in jail will organize West Virginia we will send two or three hundred down. The chances are we will have to get busy with that situation shortly."**

Furthermore, the proceedings in the Executive Board on May 4th, followed by White's speech on May 18th and the published account in the Journal of the Riot of April 6th, in themselves were proper evidence of authorization by the National Association to pursue the same unlawful methods thereafter.

The specific business of James Mullen, International Board Member for District 21, was to go back to his District from the meeting of May 4th and report the attitude of the Board on what had been reported to it by White relative to the Prairie Creek Strike.

The evidence brought the case squarely within the rule laid down by Judge Lacombe in the Hatters Case

and quoted by plaintiffs-in-error on page 111 of their brief:—

> **" Something more must be shown (than the mere payment of dues), as, for instance, that with the knowledge of the members unlawful means had been so frequently used with the express or tacit approval of the association, that its agents were warranted in assuming that they might use such unlawful means in the future, that the association and its individual members would approve and tolerate such use whenever the end sought to be obtained might be best obtained thereby."** (187 Fed. 526.)

(2) The Association, through its Executive Board, its President and its Official Journal, actively encouraged and thus participated in the illegal proceedings at Prairie Creek, **while these proceedings were going on.**

(3) The Association, through its Official Journal and by resolutions of its Executive Board and of the Convention of all its delegates, expressly and officially recognized that the active participants in the Prairie Creek affair had acted **as its representatives and in its behalf** in carrying out its aims, objects and purposes.

Evidence that a principal has approved of his agent's acts may be considered in two legal aspects:

First, as an adoption of what had been done without prior authority. This is ratification proper, in its legal sense—

Second, as evidence that the acts in question were authorized by the principal from the beginning. (See Buckeye Powder Co. *vs.* Hazard Powder Co., 205 Fed. 827, 830.)

Although the evidence of ratification in the case at bar was competent and conclusive in both aspects, it is in the second that the evidence here has its principal importance.

(4) That the failure by the Union to express its official disapproval, or to exercise the control which it had over the District and Local Branches, officers and members, and its failure to take steps to discipline them and thus prevent a recurrence of the same thing in other fields, was of itself evidence both of ratification and that what had been done was with the authority and approval of the Union.

Bearing in mind that the verdict in this case is amply sustained by the evidence on the first three heads, it remains for us to consider the Federal decisions relative to the failure by the Union to exercise control and discipline over its members and branches.

In the very nature of things where damage to property is caused by riots in connection with Labor Disputes, it is most difficult to fix by direct evidence the responsibility for these activities on the men "higher up."

There are very few cases where it can be shown that the President and Executive Council of a large Labor Union has ever been found, on the ground, inciting the members to riot or violence. Labor leaders in their public addresses and in their published organs practically always counsel peace and long suffering.

If under the law no trade union or no union leader could be held responsible for damage in labor disputes without direct evidence that he or it personally incited the particular disturbances which gave rise to the trouble, labor leaders would be for all practical purposes beyond the reach of the law. The damage done in labor disputes is caused for the most part by entirely irresponsible parties, members of the union or their sympathizers, many of whom at the time of the fracas are unrestrainable by their leaders, even if the latter wished to restrain them.

Under the law the test of the responsibility of the Union and of the higher officials thereof, for activities of the members in a labor dispute, is gauged not only by whether or not the Union official specifically incited the particular activities, but by a broader test.

Did the Union officials and the Union organization set in motion the machinery which in the natural course of events and according to previous experience would lead to the injurious results?

The cases have held that when a labor union becomes engaged in a labor dispute, it is not sufficient that the officers merely counsel peace and deplore violence. If violence results they are responsible, provided they put in motion forces which they have reason to believe would get beyond their control.

The law recognizes the ease with which, by merely advocating peaceable methods, union officials could escape responsibility for themselves and their organization for what they well knew, hoped and expected would happen, and the cases have made a more strict test than mere words.

Where a Union declares or conducts a strike in which injury to property is done by members of the union or by those acting in conjunction with them, the cases hold that the Union and its officers will be held responsible, unless the damage done is such as might not readily be foreseen by them when they set in motion the forces which have caused it, **and unless, also, as soon as they learn of the illegal acts, whether during their commission or after the damage has been done, they clearly show their good faith and disapproval of what has happened, not merely by words but by actions.**

After striking workmen have burnt down their employer's property it is not sufficient for the President of the Union to say, "we deeply regret this." The Union must go farther. It must disown the offending members and must subject them to immediate discipline or expulsion from the Union, not only to show in unmistakable form that the Union did not approve the acts or surreptitiously sanction them, but also to show to the members what will happen to them in future disturbances provided they use the same illegal measures.

When the German Submarine Commander sank the Lusitania, no one was convinced that the German

Government was sincere in its expressions of regret, when at the same time he heard that the Submarine Commander had been decorated with the Iron Cross.

If this Commander had been degraded from his rank, and expelled from the Navy, then the German Government might have convinced the World that his action had been done on his own initiative, and not on orders of the German Government.

So also, when the members of a labor union in the course of strikes burn or destroy property, it is idle for Union officials to deplore it and to disclaim responsibility, provided they keep the ringleaders in the employ of the Union, as members thereof, and honor them with appointment to responsible offices in the organization.

The foregoing considerations embody such a world of common sense and are so obvious that it would seem unnecessary to cite authorities in support of them.

Since the present is the first United States case in which the Union itself has been held to be responsible for damages, there are naturally no decisions on the precise point here involved in the Federal Courts.

The Hatters' Case, Loewe *vs.* Lawlor, 208 U. S. 274, was a suit, not against the Union, but against individual members thereof, many of whom had not taken any active part in the events which resulted in the damage to plaintiffs.

That case, however, on final appeal turned principally on the question of agency, the feature relied on by this Court in sustaining the liability of the defendants being that they continued to belong to the Union and pay Union dues after they had a right to know that the Union was doing the illegal things on account of which the suit was brought. (235 U. S. 522.)

In the case at bar the converse is true; the Union would be liable even though it had not proven by direct testimony that the Union did or specifically authorized the acts complained of. This authority is necessarily inferred

from the fact that the Union continued as officers and members those whom it knew had participated in the illegal acts.

In a number of instances the question of responsibility of the Union has arisen in connection with the granting or continuing of injunctions against a Union itself or against its higher officials.

In Southern Railway Company *vs.* Machinists Local Union, No. 14, 111 Fed. 49, Judge Hammond in the Circuit Court for the District of Western Tennessee granted an injunction against the defendant labor union and its members to restrain them from unlawful interference with the rights of non-union workmen employed by the Railway Company. The syllabus of this case contains the following:—

> "A Labor Union conducting a strike which maintains pickets and guards around the works of a former employer for the avowed purpose of preventing non-union workmen from working therein cannot avoid responsibility for personal assaults on such workmen and other unlawful acts committed in direct furtherance of such purpose because such acts were not committed by its orders and perhaps not by its members, nor because it passed a resolution not made public counseling that peaceable means alone be used, **when it did not in any public way protest against or disown such acts or take any measures to assist in preventing or punishing them.**"

The Court said (page 53), in the course of his opinion:—

> "No steps were taken to expel from the Union these violators of the law and of the personal liberty of the 'scabs' and their employers, or to censure them or to discover them to the police. Absolutely nothing was done in this way to disown these acts and now their only reliance is that the original meetings of the Union counseled and directed that there should be no violence, of which it is not shown that the 'scabs' ever had any notice."

Another very instructive decision is that in Allis-Chalmers Co. *vs.* Reliable Lodge *et al.*, 111 Fed. Rep. 264, by District Court for the Northern District of Illinois. In this case the Court clearly applied the principle that Actions speak louder than Words, holding that a Labor Union could not escape responsibility for acts of its members or even of persons not members who were incited by the members' acts, merely by passing resolutions and counseling platonic methods. In the course of his opinion Judge Kohlsaat thus stated the law (p. 267):—

"Under all the conflict of evidence in this case, it is undeniable that the defendants, or some of them, and their confederates, have conspired to and have greatly intimidated complainant's workmen, and thereby have intended to and have done great and irreparable injury to complainant's business and property, largely in excess of the necessary jurisdictional amount. It is conceivable, theoretically, that patrols or pickets could be maintained upon the platonic basis claimed by the defendants; but the evidence, taken as a whole, leaves no doubt in the mind of the Court that the name was not misapplied in this case. Here a siege exists. Probably to some extent the acts of violence complained of have been done by persons not members of the union and not connected in any manner with the striking workmen, but in some of the cases the evidence is so specific that it cannot be overlooked. It is true that at such times, when excitement runs high, the public mind is inflammable, at least among such persons as usually attach themselves to strikers. It is also true that the criminal classes take advantage of such occasions to commit, under the cover of honest men, dastardly and cowardly acts. These facts applied to this case make it apparent that the conduct of the defendants was calculated to work a serious wrong to complainant. In the judgment of the Court, the pickets were in some cases themselves

guilty of intimidating complainant's workmen, and were the indirect, if not the direct, inspiration of like acts and of violence by others. It is conceded that these pickets were appointed and directed by officers and members of defendant lodges. That a conspiracy existed among a number of these officers and members to stop, and thereby injure, the business of complainant, by intimidation and violence, is evident. In a conspiracy of this character, where it is difficult to even learn the names of the individual members of the lodges, the active co-operation of the individual members in the conspiracy is difficult to establish by direct proofs; but their acquiescence in, and connivance at, the methods pursued by their officers and leaders, is easily established by the results sought and accomplished."

Union Pacific R. Company *vs.* Ruef, *et al.*, 120 Fed. 102 C. C. District of Nebraska, was a bill in Equity to enjoin the defendants from interfering with plaintiff's business. In the course of his opinion, Judge Munger, said (page 126):—

> **" The evidence does not disclose that any of these unlawful acts and acts of violence were ever disapproved of by respondents, that the guilty ones were remonstrated with, that their strike benefits had been stopped or any protest had been made against such unlawful acts.** On the contrary, the evidence shows that William Richilieu, who appears not only to have been an instigator, but an actual participant in several assaults, was thereafter placed in charge of the pickets as captain."

The Court, quoting from Allis-Chalmers Co. *vs.* Reliable Lodge, heretofore cited, continued as follows:—

> "In a conspiracy of this character, where it is difficult to even learn the names of the individual members of the lodge the active co-operation of the indi-

vidual members in the conspiracy is difficult to establish by direct proofs; but their acquiescence in and connivance at, the methods pursued by their officers and leaders, is easily established by the results sought and accomplished. * * *

"In the light of these authorities it seems clear that all of the respondents who were members of the various organizations which established and maintained the picket line, as well as those who are shown by the evidence to have personally participated in the assaults and various acts of intimidation, must in this action be held chargeable with the results naturally flowing therefrom."

A separate opinion was delivered by Judge McPherson in which he laid down clearly the principles of law involved in connection with unlawful picketing, stating twelve propositions of law defining the right of employers and employees (pages 113–114).

On page 117, he calls attention to and lays weight on the fact that in none of the cases of lawlessness was the guilty man "informed against before the municipal authorities by any striker or was he subjected to any kind of discipline by the lodges or officers of the strikers." "It is one thing to advise peace and good order and gentlemanly conduct, but talking about and advising peace and good order and gentlemanly conduct and then taking no action against violence and drunkenness and assaults and blackguardism and profanity, to me do not square themselves" (page 117).

Again, on page 119, Judge McPherson states:—

"More than a dozen of the pickets were identified. In other cases they were identified as strikers or pickets. In other cases the assailants and violaters of the rules of decency were not known. But no man who has read the 1186 pages of evidence which I have read can have the slightest doubt but that these assaults, and these acts of violence, and these threats, and these blasphemous denunciations would

not have occurred but for this picketing. Many of the defendants took no part in them, being honorable men. No doubt whatever is there in my mind but that a great many of the defendants deprecate it. **But deprecation ought to be accompanied by words of denunciation. But both deprecation and denunciation ought to be accompanied by some affirmative acts to stop it, or at least to cut loose from such men."**

In Allis-Chalmers *vs.* Iron Molders' Union, No. 125, 150 Fed. 155, the 2nd Paragraph of the Syllabus is as follows:—

"A Labor organization, or its officers, or a committee which selects members to act as pickets during a strike, may become responsible for the unlawful acts of such pickets or their violation of an injunction, although they were instructed in good faith to observe the injunction, and do no unlawful act where with knowledge that the instructions have been disobeyed by particular persons they are still kept in the service."

Phillips Sheet & Tin Plate Co. *vs.* Amalgamated Assoc. of Iron Steel & Tin Workers, 208 Fed. 335 (U. S. D. C. Ohio, 1913), was a case in which an injunction having been issued against the defendants during a strike, a number of them came up for a final hearing for contempt for violation of the injunction. With one exception the accused were all Union men. The Court in the course of his opinion laid weight on the fact that of all the strikers and sympathizers "who were present when the acts of violence occurred, no one entered a protest, or endeavored to bring the assailant to justice. When called upon to point him out they protected him by standing mute."

In the course of his opinion the Court further stated:—

"Some of them appear here, as witnesses, to screen the guilty party. * * * The assaults which

were the most reprehensible and vicious occurred in proximity to and in view of the strike headquarters. In so far as the present record discloses, no effort has been made by organized labor to bring any assailant of any of plaintiff's employees to justice. * * * The strike Committee, the officers of the Union, and the managers of the strike have an active duty to perform. That duty does not end in instructing strikers or sympathizers, or both, to observe and not to violate the injunction, ever though the instructions be given in good faith. The rational rule prevails that a labor organization, or its officers, or a committee which selects members to act as pickets during a strike may become responsible for the unlawful acts of such pickets or their violation of an injunction, although they were instructed in good faith to observe the injunction and do no unlawful act, **where, with knowledge that the instructions have been disobeyed by particular persons, such persons are still kept in service.** The directing officers of a union, whose members are on a strike have been enjoined from intimidation, will themselves be deemed guilty of a violation of the injunction if they do not prevent (if they reasonably can do so) its violation by those under their control, or if they countenance acts of intimidation and refrain from using, so far as good faith would suggest, the means which they possess of preventing such acts."

Another decision which brings out with entire clearness the principle here under discussion, is Alaska Steamship Company *vs.* International Longshoremen's Association *et al.*, 236 Fed. 964 (D. C. W. W. Wash.).

This was a bill for an injunction to restrain acts of intimidation etc., in connection with the strike at the plaintiff's piers. The individual defendants were the officers of the International Union and Local Unions of the Longshoremen's Association.

The International Union was a voluntary association

composed of Districts with an organization somewhat similar to the United Mine Workers of America. An injunction was issued against the officials of the Union and its members, the Court holding that a tacit understanding was sufficient to constitute a conspiracy and that the purpose of the conspiracy and the responsibility therefor was to be judged not solely by what the officials of the Union did but also by what they failed to do. The 8th paragraph of the Syllabus is as follows:—

> **"A trade Union, conducting a strike, is liable for the unlawful acts of members and others associating themselves with the strikers, unless such acts be disavowed, and, in the case of members, the offenders be disciplined or expelled."**

The Court held that the acts of the members of the Union in the furtherance of the conspiracy were acts of the Union itself. Judge Netterer in the course of his opinion, said:—

> "While there is no testimony that any of these acts were expressly authorized, there is no evidence that the acts were disapproved, or members disciplined or expelled. The testimony does show that the defendants did have control of the situation, and did not exercise their influence or power to correct the irregularities or disavow the acts until the issuance of the temporary restraining order and service upon the defendants, when all overt acts ceased, which considered with what defendants did do, confirms the conclusion that the acts were under the authority and within the control of defendants. **When persons or parties set in motion machinery for the purpose of shaping sentiment they cannot take the benefits without being burdened with responsibilities.** Such parties thereby assume the burden of controlling such agency, if within their power; and if, perchance, some persons unauthorized, acting with defendants, commit unauthorized acts, it is incumbent on the

defendants to show such fact, and, if committed by members under the control of the Association, **to disavow such acts by causing such offending members to be disciplined or expelled."**

A recent decision on the subject, is Kroger Co. *vs.* Retail Clerks' International Protective Assn. Local No. 424, *et al.*, 250 Fed. 890, 896, in which Judge Trieber said:—

"Now, there is one other question which is of considerable importance. The evidence connects only a part of the defendants with these unlawful acts. But there is no question of law better settled than that an agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means, is an unlawful conspiracy, and the act of any one person, who is a party to that agreement, any overt act to carry out its objects, the objects of the unlawful agreement, before the object of the conspiracy has been abandoned, is the act of every member thereof. The evidence shows that all of the defendants, with the exception of two, to whom I shall refer later, were members of this Union. Some of the speeches made at the meetings, as shown by the evidence, certainly indicate that there was an attempt to inflame the minds and arouse the passions and prejudices of the members against the plaintiffs. While it is true that there is nothing to show that any of the speakers directed them to commit acts of violence, on the contrary, the language used was always to act in a peaceful and quiet manner, yet the evidence shows that many of them did not do so, and when reports were made that so many stores had been closed it seemed to meet the approval of all. The chief organizer, who presided at the meeting, Mr. Baker, commended them for what they had accomplished; a man named Sarjeant, although not a member of this Union, told them to continue to work until they had closed every one of the stores of the plaintiff, as that was the

only way the employers could be induced to do justice to their employees.

"But, no matter what advice was given, acts of violence were committed by members of the Union. They were committed for the purpose of carrying out successfully the object of the Union, that is, to secure a successful strike, or otherwise to put the plaintiff out of business, and every member of that Union, the defendants here, is equally responsible for the acts of the others. **No evidence has been introduced to show that any of those who committed any of the acts which were reported to the Union, were reproved, or their actions disapproved, by the officers of the Union or any of the members;** so the Court finds that each of the members of this organization is just as responsible for the unlawful acts of those who committed them as if they had done them in person, and for this reason the temporary injunction must go against all of them, or against none. The Court is of the opinion that the temporary injunction should issue against all members of the Union who are defendants in this case."

See also Franklin Union No. 4 *vs.* People, 220 Ill. 355;

Illinois Cent. R. R. Co. *vs.* International Ass'n. of Machinists, 190 Fed. 910;

Stephens *vs.* Ohio State Telephone Co., 240 Fed. 759, 778;

Niles-Bement Co. *vs.* Iron Moulders Union Local No. 68, 246 Fed. 851, 863–864.

FIFTH.—**The Destruction of the Business and Property of Defendants-in-Error was Accomplished in the Course of an Unlawful Combination and Conspiracy in Restraint of Interstate Commerce.**

We do not contend that the United Mine Workers, while "lawfully carrying out the legitimate objects" specified in its Constitution, would be an unlawful combination or conspiracy in restraint of interstate commerce.

Neither these objects, nor the means specified to attain them are necessarily unlawful.

Although the increase in wages and shortening of hours of work are usually calculated to raise prices, this effect, if attained by lawful means, is indirect. Any restraint of trade resulting would, in such case, be a reasonable restraint.

Although, also, one of the means provided is strikes, such are not in themselves unlawful.

Indeed, it is now widely recognized that the existence of trades unions is calculated in the long run to better the conditions of commerce rather than to restrain it, but only so long as they are conducted by lawful means.

We make no claim that a carpenter working at his bench, or a farmer at his plow, or a miner digging coal in a mine are engaged in interstate commerce.

When, however, as appears in the picture in the United Mine Workers Journal of July 16th, 1914 (Record page 3406), the miner discards his pick for a high powered rifle, and joins with 1500 of his fellow Unionists in destroying a mine and tipple for the sole and express purpose of keeping the product from shipment to other states, driving away and killing the employees in order to prevent them from producing the commodities so to be shipped, and burning cars of coal on the railroad tracks already billed to other states, it is perfectly clear that such miner is engaged in a conspiracy in restraint of interstate commerce and that the organization to which he belongs, which instigates him and for whose

benefit he does the illegal acts, is a combination in restraint of interstate commerce.

The other side confuse motive with intention.

When a hunter shoots a duck, his motive is to get food or to satisfy his vanity by proving his skill and superiority.

His intention is to kill the duck.

The motive of the Unionists who destroyed plaintiffs' property and business may have been to benefit their craft by unionizing all the mines of the country, just as that of Germany was to insure the spread of Kultur throughout the world.

Their immediate purpose and intention was to prevent plaintiffs' from shipping their coal to other states in competition with that there mined with Union labor.

Plaintiffs-in-error also stress the fact that the immediate participants "had not the slightest intent to deal with or interfere with interstate commerce."

What they really mean is that neither Pete Stewart, Red Doyle or Sandy Robinson had ever read Gibbons *vs.* Ogden.

They intended, however, to burn up the cars of coal consigned to Nachitoches, Louisiana.

> "The conspirators must be held to have intended the necessary and direct consequences of their acts and cannot be heard to say to the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are legal contemplation chargeable with intending that result."
>
> U. S. *vs.* Patten, 226 U. S. 525.

Furthermore, it is not the specific intent of the immediate participants which is important, but the collective intent, the intent of the association which inspired instigated and conducted the whole affair.

Nothing could better illustrate the wisdom of Congress

in including as defendants in suits of this kind unincorporated associations.

In cases of this kind it is the association that is the essence of the illegal combination.

The immediate participants, to whom the other side would restrict our remedy, are usually but the ignorant tools, often having no specific intent but a blind rage inspired and instilled into them by the brains of the Association higher up.

With the foregoing distinctions in mind, it would seem unnecessary to discuss at length the authorities relied on by the other side.

We do not consider it at all necessary in order to sustain this judgment, to regard the Knight case as modified, much less overruled, by the later decisions.

In that case there was no evidence of a specific intention to restrain interstate commerce or to prevent other people from engaging therein. The question was simply whether the bare acquisition under one control of a number of competing sugar plants, without evidence of illegal means used or of a purpose to lay any plant idle, in itself amounted to an attempt at a monopoly or a combination in restraint of trade.

If in that case it had appeared, as it did in Pennsylvania Sugar Refining Co. *vs.* American Sugar Refining Co., 166 Fed. 254, in Shawnee Compress Co. *vs.* Anderson, 209 U. S. 423, or in U. S. *vs.* Reading Co., 226 U. S. 324, that the purpose was to close the plants up or to prevent them from competing with the defendant, the Court which decided the Knight case would certainly have held the combination illegal.

Even so, the case would not come within the most flagrant of these cases, "the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes."

Loewe *vs.* Lawlor, 208 U. S. 274.

It is in the latter class that the combination here involved falls.

Where a specific intention to suppress or restrain interstate commerce is present; where, as here, it is conclusively shown that the sole purpose of the illegal acts was to prevent the shipments of commodities from one state to another, then every means to attain that result is a direct and unreasonable interference.

> "As to the suggestion that the matters alleged to have been contemplated would not have constituted an offense if they had been done, it is enough to say that some of them conceivably might have been adequate to accomplish the result, **and that the intent alleged would convert what might on their face be no more than ordinary acts of competition or small dishonesties of trade, into a conspiracy of wider scope,** as has been explained more than once."
>
> Nash *vs.* U. S., 229 U. S. 373.

The fact that coal mining is not Interstate Commerce in no way goes to show that the destruction of a coal mine for the purpose of restraining Interstate Commerce does not have that effect, any more than the fact that "labor is not a commodity" permits laborers to burn and destroy things which clearly are.

If a state were to pass a law prohibiting the Interstate shipment of commodities made with child labor, while permitting the sale of such articles within the state, could there be the slightest doubt as to its unconstitutionality?

In such case the necessary inference would be that the state intended to discriminate against and thus interfere with Interstate Commerce, and such an intent being found, is conclusive of unreasonableness.

Neither State nor United Mine Workers can be heard to say that the result he intends is not a direct result.

If a State law required the closing of all coal mines shipping to other states, permitting those to operate which shipped within the State, would plaintiffs in error contend that this law was constitutional as regulating production merely?

Ever since the decision in Welton *vs.* Missouri, 91 U. S. 275, 282, it has been settled that a State Statute **discriminating** against articles which have come from other States or are destined thereto, is unconstitutional even though it be of a nature which would bring it, but for the discrimination, within the recognized power of the State.

In such cases the attempted discrimination shows a conclusive intent by the State to restrain interstate commerce and such intent being shown, every restraint thereby produced is held to be direct and unreasonable.

See also Darnell *vs.* Memphis, 208 U. S. 113.

> **"If a State, with its recognized powers of government, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess."**
>
> *In re* Debs, 158 U. S. 564, 600.

Plaintiffs in error make a labored argument to show that by the oft-recurring expression "prevention of the mining of coal by non-union men," the Unionists referred merely to the fact that they were going peaceably to persuade all outsiders to join their organization. This result, it is suggested, would effectively and very peaceably and properly prevent the mining of Union coal, since after the conversion of the non-Unionists all coal would be mined Union and commerce would go merrily on. (Brief, page 139.)

How, may we ask, was the condition of the workmen at Prairie Creek to be improved, or the membership enlarged by burning up our mines, destroying permanently the opportunity for 900 men to work therein?

Do counsel seriously contend that, when Pete Stewart, the President of District 21, stood in front of Magee's drug store at Midland on May 25th two days after the Convention at which White made his speech, and said that the scabs were to be run out of Prairie Creek and

that he would take a gun and die before he would see it run open shop, he was ingenously referring to the fact that the scabs were all to be converted to Unionism and that when he had persuaded them all to join it would no longer be scabs or non-union men who were digging coal at Prairie Creek?

Or that Delegate Feehan had this idea in mind when he said to the 1908 Convention:—

> **"I am very desirous of lending all of my efforts to prevent, if possible, the production of non-Union coal"** (580).

The facts proved in the case at bar showed beyond question a combination and conspiracy in restraint of Interstate Commerce.

First, because the Acts done so necessarily produced that result that no proof of specific intent was necessary.

Second, because such specific intent was conclusively proved.

Although the trial Judge left it to the jury to say whether the acts had been for the purpose of preventing Interstate shipments or for some other purpose, he should properly, as we shall hereafter show (*infra*, pp. 264–276), have given binding instructions on this point for the plaintiffs.

SIXTH.—**The Trial Judge did not Err in His Supplemental Instructions to the Jury.**

No exception at all was taken by the other side to that part of the charge of the trial Judge quoted by counsel for plaintiffs in error on pages 147, 148 of their brief, nor does any assignment or specification of error in this Court refer either to this part of the charge or to any part of the prior charge.

The only portion of the charge assigned as error is that part quoted on pages 149, 151 of the brief, and even this assignment of error does not state whether the error complained of consists, as the exception taken at the time clearly indicated, of a misstatement of the law, or, as the brief of plaintiffs in error now contends, of its supposedly coercive tone.

After the Judge's principal charge, the jury came back twice for additional instructions, the first time on November 21st and the second time on November 22nd.

In the November 21st additional instruction, the questions by the jurors were directed to the legal liability of the National Union for the acts of its members and officers. In his answers to these questions the trial Judge summarized the statement of the law which he had given in his principal charge, stating, in effect, that the Union could be held responsible if the acts resulting in the destruction of the property had been done by the association, its individual members, local or district, or members carrying out the purpose of the unlawful agreement, "to prevent the sale of coal in the different states in Interstate Commerce in competition with union-mined coal."

> "JUROR JOHNSON:—You said where two or more were implicated in this and done it, the whole union is responsible?
>
> "THE COURT:—Yes, if they are carrying out the purposes." (Rec., 3234.)

Although counsel for both sides were present when this occurred, no exception whatever was taken by plaintiffs in error, either at the time, nor even subsequently, nor is this assigned as error.

On the following day, November 22nd, the jury came back again and the Court impressed on them their duty to agree on a verdict.

He also said that, under the right recognized in the Federal Courts to say what the Court believes in relation to the facts, they were advised that this Court is of the opinion that the facts in this case "justify you in the conclusion overwhelmingly" that it had been the Union's policy to restrain competition of non-union coal, that the strike had been called and the force put in motion which dstroyed this property by those who were the instrumentality of the Union for this purpose. He also said that he had not a thought that there would have been trouble there if it had not been for the prevention of the mining of non-union coal, and that if it were his duty to decide it he would decide it there.

He then continued (3236):—

> "**Now you are not bound by my opinion.** I have a right to give you my judgment, however. **You are the sole and exclusive judges of the facts and it is for you to determine these issues of fact independent of my judgment and this Court believes you ought to determine it** and under your oaths as jurors agree upon a verdict."

The Court then told them that his opinion on the legal question as to the responsibility of the greater organization was subject to review by the higher Court and urged them to agree on a verdict.

The trial Judge did not mean by this last statement, as counsel for plaintiffs' in error contend on page 152, that the United Mine Workers, upon the evidence, were responsible as a matter of law.

In the preceding sentence he had told the jury that they were the exclusive judges of the **facts.**

He then said:—

> "If there is any question **about the law** on the responsibility for this, responsibility of the greater organization, that is for the higher Court to say."

He was merely contrasting the "facts" with the "law."

On the day before, in answer to questions by jurors, the Court had said (3234, quoted in brief of plaintiffs in error pp. 147–148) that the organization was liable for acts of its officers and members only in case these acts were done in carrying out the purpose of the unlawful agreement, to which statement on his part no exception had been taken by defendant, although on the day before they had taken the two following exceptions to the Judge's principal charge (3220–3221):—

> "MR. WARRUM:—The defendants separately except to the instruction which submits to the jury the question that the United Mine Workers of America in its entire membership can be held responsible for the conduct of a local strike when violence is used without showing that the entire membership participated in the wrongful acts, and without full knowledge of the same ratified such wrongful conduct before the institution of this suit.
>
> THE COURT:—Exception allowed.
>
> "MR. WARRUM:—And the defendants severally except to that part of the court's charge which submits to the jury the question that the controversy between the miners and the plaintiffs in question was under the control of the International Association and its officers, and that they were charged with the duty of preventing violence and with the responsibility of any violence that occurred or any wrongful acts that were committed.
>
> "THE COURT:—Exception allowed."

It was to the questions of law presented by these exceptions that the Trial Judge obviously referred, and on which he said that the higher court would have to pass.

Certainly nothing could better illustrate the wisdom of the rule requiring a timely exception to call an objectionable charge to the Court's attention and give him a chance to correct it, than this present attempt to spell in the Judge's charge a thought that he never had when he delivered it. The charge was clearly understood by all who heard it, and counsel for defendant in no way regarded or objected to it, either as coercive or as a holding that, as a matter of law, the Union was liable.

All that Judge Elliott said was that he did not then intend to discharge the jury; that in his opinion the whole trouble had been started and engineered by the Union in order to prevent this non-union coal from coming into competition with union coal mined in other states; that the jury were the sole and exclusive judges of the facts and it was for them to determine **these issues of fact** independent of his judgment; that the higher Court would ultimately settle any question of the law of agency involved, but that the question could never get up to this Court until the jury had rendered their verdict, and that they were as well able to arrive at one as any other jury would be.

The trial Judge had evidently got the impression in some way that the jury expected, if they did not agree promptly, that they would be allowed to go home.

He very properly corrected this impression.

Counsel for plaintiffs' in error, by extracting the last twelve words of this charge, and printing them as a separate paragraph, separated from the sentence of which they formed a part, seek to convey the impression to this Court that the Trial Judge ended his charge with the peremptory command (Brief of plaintiffs in error p. 155, see also 151):—

> "You now return to your jury rooms and bring in a verdict."!!!

This entirely misrepresents the trial Judge. What he really said was this:—

> "You see the importance of the situation **and I now urge you** * * * that you now return to your jury rooms and bring in a verdict."

The punctuation in the charge is that of the stenographer.

What is written as the last sentence, on examination proves not to be a sentence by itself, but part of the long sentence beginning "You see."

The way in which the trial Judge in fact concluded the charge should, it is submitted, properly be punctuated as follows:—

> "You see the importance of the situation **and I now urge you** (with the idea of doing the right thing and putting this matter in that condition that a trial of the case with a legitimate end in which a verdict of the jury will place it, and with a knowledge and feeling of a responsibility and that that responsibility is with you) **that you now return to your jury rooms and bring in a verdict."**

(1) *The Instructions were Proper.*

Under the decisions of this Court the Trial Judge was entirely within his province in delivering this supplemental instruction.

In Vicksburg & Meridian Railroad Co. vs. Putnam, 118 U. S. 545, 553, Justice Gray said:—

> "In the courts of the United States, as in those of England from which our practice was derived, the Judge, in submitting a case to the jury, may, at his discretion, **whenever he thinks it necessary to assist them in arriving at a just conclusion,** comment upon the evidence, call their attention to parts of it which he thinks important, and express his opinion upon the facts; and the expression of such an opinion, when no rule of law is incorrectly stated, and all matters of fact are ultimately submitted to

the determination of the jury, cannot be reviewed on writ of error. Carver *vs.* Jackson, 4 Pet. 1, 80; Magniac *vs.* Thompson, 7 Pet. 348, 390; Mitchell *vs.* Harmony, 13 How. 115, 131; Transportation Line *vs.* Hope, 95 U. S. 297, 302; Taylor on Evidence (8th ed.), Par. 25. The powers of the Courts of the United States in this respect are not controlled by the statutes of the State forbidding judges to express any opinion upon the facts. Nudd *vs.* Burrows, 91 U. S. 426; Code of Georgia, Par. 3248. The exceptions to so much of the Judge's charge as bore upon the liability of the defendant cannot therefore be sustained."

In United States *vs.* Reading Railroad, 123 U. S. 113, the trial Judge had stated that **he was of the opinion that the jury should not under the circumstances find for the plaintiff,** but nevertheless left it to the jury to decide. Of this Justice Gray said:—

"Trial by jury in the Courts of the United States is a trial presided over by a judge, with authority, not only to rule upon objections to evidence and to instruct the jury upon the law, but also, when in his judgment the due administration of justice requires it, to aid the jury by explaining and commenting upon the testimony, and even giving them his opinion upon questions of fact, provided only he submits those questions to their determination. Vicksburg & Meridian Railroad *vs.* Putnam, 118 U. S. 545; St. Louis &c. Railway *vs.* Vickers, 122 U. S. 360."

Simmons *vs.* United States, 142 U. S. 148, 155, was a criminal case for embezzlement. At the close of the opinion this Court said:—

"The only other exception argued is to the statement made by the judge to the second jury, in denying their request to be discharged without having agreed upon a verdict, that he regarded the testimony as convincing. But at the outset of his

charge he had told them, in so many words, that the facts were to be decided by the jury, and not by the Court. And it is so well settled, by a long series of decisions of this Court, that the judge presiding at a trial, civil or criminal, in any Court of the United States, is authorized, whenever he thinks it will assist the jury in arriving at a just conclusion, to express to them his opinion upon the questions of fact which he submits to their determination, that it is only necessary to refer to two or three recent cases in which the judge's opinion on matters of fact was quite as plainly and strongly expressed to the jury as in the case at bar. Vicksburg &c. R. R. *vs.* Putnam, 118 U. S. 545; United States *vs.* Phila. & Reading Ry., 123 U. S. 113; Lovejoy *vs.* United States, 128 U. S. 171."

In Patton *vs.* Texas & Pacific Ry., 179 U. S. 658, 660, Justice Brewer said:—

> **"The (Trial) Judge is primarily responsible for the just outcome of the trial. He is not a mere moderator at a town meeting, submitting questions to the jury for determination, nor simply ruling on the admissibility of testimony, but one who in our jurisprudence stands charged with full responsibility."**

See also Young *vs.* Corrigan, 208 Fed. 431, 438, and cases cited.

St. Louis etc. Ry. *vs.* Vickers 122 U. S. 360.
Rucker *vs.* Wheeler 127 U. S. 85, 93;
Lovejoy *vs.* U. S. 128 U. S. 171;
Allis *vs.* U. S., 155 U. S. 117 (hereafter discussed).
Aerheart *vs.* St. Louis, etc., R. Co., 99 Fed. 907.
Freese *vs.* Kemplay, 118 Fed. 428, 430.

(2) *No Proper Exceptions were Taken by Defendants.*

A further conclusive reason, however, why this assignment of error cannot be sustained, is that no proper exception was taken to it at the time, nor was the attention of the Court in any way called to the contention now made by the plaintiffs in error,—that "this charge amounted to a peremptory instruction to the jury to return a verdict against the defendants," and was "coercive in its tenor and terms." (Brief of plaintiffs in error, page 151.)

What in fact happened is shown by the Record, page 3236.

After the charge by the Court quoted in the brief of plaintiffs in error, the following took place:—

> "MR. GRANT:—May I take an exception to that part of the charge with reference to the great conspiracy and also that part which is to the effect that the organization put that in force?"
>
> "THE COURT:—Yes, sir; in the opinion of the Court you are entitled to your exception.
>
> "MR. GRANT:—I just desire to get an exception.
>
> "THE COURT:—The exception is allowed."

Not a word or a thought about any attempt at coercion, or peremptory instruction, or the withdrawal from the consideration of the jury of the question of union conspiracy *vs.* popular uprising which, in his principal charge, the Court had left to the jury (3211–3215) to the evident entire satisfaction of counsel for defendants. (3220–3221.)

The exception taken was directed solely at the question of the legal responsibility of the Union for the acts of its members and subordinate officers, which was the only part of the original charge to which defendant's counsel had excepted, (3220–3222). See exceptions quoted *supra*, page 246 hereof) and which they then evidently intended to preserve in spite of their apparent waiver thereof by failure to except to the Court's first supplemental instruction on the day before.

The present contention is an after thought of counsel, which did not suggest itself until a study of the record on appeal made it necessary to find some ground for review.

There is scarcely a volume of the Federal Reporter, published since the organization of the Circuit Courts of Appeals, that does not contain a decision sufficient as a precedent to overrule this assignment of error.

We are fortunate in having a decision by this Court on the precise point here involved, affirming a judgment rendered by Judge Sanborn when sitting as trial Judge in the Eastern District of Arkansas, Western Division.

Allis *vs.* United States, 155 U. S. 117, arose on a conviction of the president of a bank for making a false entry to his own credit, with intent to defraud the bank. It appeared from the bill of exceptions that after the jury had been deliberating for several hours the Court called them into the court room and inquired if they had reached a verdict. On being informed that they had not, the Court proceeded to re-read them some portions of the original charge and then went on to make some illustrative remarks, which on appeal, defendant contended amount to an argument on the question of intent, **in an effort to coerce the jury to a verdict for the government.** With regard to this this Court said:—

> "To the charge, of which the only portions preserved in the record are those just referred to, a single exception was taken in the following words: 'The defendant excepts to the action of the Court in recalling the jury and in arguing the testimony and in stating part of the testimony on certain points without stating the entire testimony.' It is now insisted that the Court expressed an opinion as to the inference to be drawn from the facts, argued the question of intent to the jury **and sought to coerce a verdict.** But the exception taken

is not sufficient to bring all these matters before us. **There is no intimation in the exception that the defendant at the time thought that the Court was trying to coerce the jury, or suggested that its language might have such an influence upon them. Evidently the claim of coercion is an afterthought from subsequent study of the record.** But it is settled that no such afterthought justifies a reviewing Court in reversing the judgment. A party must make every reasonable effort to secure from the trial Court correct rulings or such at least as are satisfactory to him before he will be permitted to ask any review by the appellate tribunal; and to that end he must be distinct and specific in his objections and exceptions. Rule 4 of this Court provides: 'The party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts, and those matters of law, and those only, shall be inserted, in the bill of exceptions and allowed by the Court.' Repeated decisions have emphasized the necessity of a strict adherence to this rule: 'However it might pain us to see injustice perpetuated by a judgment which we are precluded from reviewing by the absence of proper exceptions to the action of the Court below, **justice itself and fairness to the Court which makes the rulings complained of, require that the attention of that Court shall be specifically called to the precise point to which exception is taken, that it may have an opportunity to reconsider the matter and remove the ground of exception.'** Harvey *vs.* Tyler, 2 Wall. 328, 339. 'If it was intended to save an exception as to distinct propositions embodied in the instructions, the attention of the Court should have been directed to the specific points concerning which it was supposed error had been committed.' Moulor *vs.* Am. Life Ins. Co. 111 U. S. 335, 337. 'An exception "to all and each part" of the charge gave no information whatever as to what was in the mind

of the excepting party, and, therefore, gave no opportunity to the trial Court to correct any error committed by it.' Block *vs.* Darling, 140 U. S. 234, 238. See also Phoenix Life Ins. Co. *vs.* Raddin, 120 U. S. 183, and cases cited in the opinion; N. Y. & Colorado Mining Co. *vs.* Frazer, 130 U. S. 611; Anthony *vs.* Louisville & Nashville R. R., 132 U. S. 172. We see nothing in this case to withdraw it from the scope and control of this rule.

The Court also stated that even though Judge Sanborn's supplemental instructions "contained an expression of opinion, such expression is permissible in the Federal Courts. Simmons *vs.* U. S. 142 U. S. 148; Doyle *vs.* Railway Co., 147 U. S. 413."

It will be observed that the foregoing was a criminal case, and thus is a stronger precedent than a civil suit. It will also be noted that it was a case in which the instructions complained of were given after the jury had been recalled after several hours' deliberation.

Both the points heretofore suggested as an answer to the present contention of plaintiffs in error are flatly decided.

This Court held (1) that the Trial Judge might properly express his opinion on the facts and

(2) that the Appellate Court would not reverse on account of an alleged coercive instruction to which defendants' counsel, at the time, did not take an exception specifically calling the coercive nature of the charge to the Trial Court's attention.

The decision of the majority of the Circuit Court of Appeals followed a long line of decisions by the same Court.

In Lesser Cotton Co. *vs.* St. Louis etc. Ry., 114 Fed. 133, 140, coming up from Arkansas, the action was one for the destruction of buildings by locomotive sparks. The trial Court charged that in order to recover, the plaintiff must prove negligence on the part of the de-

fendant and such portion of the charge was excepted to at the close of the trial, but the exception was general and contained no statement that this part of the charge was erroneous because the plaintiffs were entitled to recover on account of a violation of the Arkansas Statute prohibiting labor on Sunday. The Court held that as the latter issue of law was not presented to or considered or ruled on by the trial Court, it could not be considered by the Circuit Court of Appeals. Judge Sanborn said:—

> **"In an action at law, this is a Court for the correction of the errors of the Court below, exclusively. Questions which were not presented to nor decided by that Court are not open for review here, because the trial Court cannot be guilty of any error in a ruling it has never made upon an issue to which its attention has never been called."**

In Southern Pac. Co. *vs.* Arnett, 126 Fed. 75, 77, 80, Judge Sanborn also said:—

> "The burden is on the plaintiff in error to establish the existence of those errors, and in the absence of proof by the record that a question of law arose, and that it was presented to and ruled upon by the Court below, no error is established, because none could arise concerning a question which was not presented, considered, or decided by the trial Court. Chicago G. W. Ry. Co. *vs.* Price, 38 C. C. A. 239, 250, 97 Fed. 423, 434; U. S. *vs.* Patrick, 20 C. C. A. 11, 17, 73 Fed. 800, 806; Lesser Cotton Co. *vs.* St. Louis, I. M. & S. Ry. Co., 52 C. C. A. 95, 105, 114 Fed. 133, 143; McCarty *vs.* U. S., 101 Fed. 113, 41 C. C. A. 242; Myers *vs.* Brown, 102 Fed. 250, 42 C. C. A. 320; South Penn Oil Co. *vs.* V. Latshaw, 111 Fed. 598, 599, 49 C. C. A. 478, 479; Jones *vs.* Buckell, 104 U. S. 554, 26 L. Ed. 841. * * *
>
> "Moreover, if this suit should be treated as an action for damages for a tort rather than for a breach of a contract, the judgment below cannot be reversed

on account of the error in the charge regarding interest. The entire charge of the Court concerning the measure of damages and the interest upon the damages to be allowed is contained in a single paragraph, and the only complaint of it before the jury retired was a general exception 'as to the measure of damages.' No exception was taken to the allowance of interest, nor was the attention of the Court in any way called to the question of law relating to it. **Counsel for the defendant by their silence waived any objection to the charge upon this ground,** and the error in this respect is not here for our consideration. **It was indispensable to the presentation of it to this Court that a SPECIFIC exception should have been taken which clearly pointed out to the trial Court the error into which it had fallen, and thus sharply called its attention to the question of law which counsel now seek to present.** Lincoln *vs.* Claflin, 7 Wall 132, 139, 19 L. Ed. 106; Cass County *vs.* Gibson, 107 Fed. 363, 367, 46 C. C. A. 341, 346."

In American Smelting & Refining Co. *vs.* Karapa, 173 Fed. 607, 608, Judge Sanborn thus summarized the law as laid down in the previous cases:—

"It is indispensable, to a review in the Courts of the United States of any ruling of the trial Court upon a request for an instruction to the jury, that it should be challenged by an exception taken and recorded at the time, to the end that the attention of the trial Judge may be **sharply** called to the question presented thereby, and that a clear record of his action and its challenge may be made. Hutchins *vs.* King, 1 Wall 53, 60, 17 L. Ed. 544; Pomeroy's Lessee *vs.* State Bank of Indiana, 1 Wall 592, 602, 17 L. Ed. 639; Newport News & Miss. Valley Co. *vs.* Pace, 158 U. S. 36, 37, 15 Sup. Ct. 743, 39 L. Ed. 887; Tucker *vs.* United States, 151 U. S. 164, 170, 14 Sup. Ct. 299, 38 L. Ed. 112; Potter *vs.* United States, 122 Fed. 49, 55, 58 C. C. A.

231, 237; Southern Pacific Co. *vs.* Arnett, 126 Fed. 75, 81, 61 C. C. A. 131, 137."

In Beiseker *vs.* Moore, 174 Fed. 368, 372–373, it was held that an exception to a part of the trial Judge's charge which had manifest reference to the disputed question of interest, which had always been the chief bone of contention between the parties, could not be made the subject of an argument on an error in the passage excepted to relative to deficiency of acreage. Judge Adams said:—

> "This charge and exception had manifest reference to the disputed question of interest, which had always been the chief bone of contention between the parties, and if they had any reference to the deficiency of acreage, they were so obscure as not to afford the basis for review. They at best for the defendants contained two subjects—one interest and the other discrepancy of acreage. 'When an exception is reserved to a charge which contains two or more disputed or separable propositions, it is the duty of counsel to direct the attention of the Court to the precise point of objection.' The rule is that the matter of exception shall be so brought to the attention of the Court before the retirement of the jury to make their verdict **as to enable the judge to correct any error if there be any in his instructions to them.** Mobile & Montgomery R. R. Co. *vs.* Jurey, 111 U. S. 584, 4 Sup. Ct. 566, 28 L. Ed. 527. The rigid enforcement of this rule, not only conduces to the orderly administration of justice, but is a consideration specially due to trial judges who have no other opportunity for correcting an inadvertent remark or erroneous statement of law, without granting a new trial and incurring the delays and expenses incident thereto."

In Jones *vs.* United States, 179 Fed. 584, 592, the same Court said:—

"In an action at law this Court is limited to the correction of the errors of the Court below. Questions which were not presented to or decided by that Court are not open for review here because the trial Court cannot be guilty of error in a ruling that it has never made upon an issue to which its attention was never called. In **Robinson & Co.** *vs.* **Belt, 187 U. S. 41,** 50, 23 Sup. Ct. 16, 19 (47 L. Ed. 65), the province of the Appellate Court is stated in the following language:

"'While it is the duty of this Court to review the action of subordinate Courts, **justice to those courts requires that their alleged errors should be called directly to their attention and that their action should not be reversed upon questions which the astuteness of counsel in this Court has evolved from the record. It is not the province of this Court to retry these cases de novo.'**

"An exception to this limitation has been admitted **in criminal cases** where, if a plain error has been committed by the trial Court absolutely vital to defendant's case, the Court will feel itself at liberty to correct it, although not presented in the record by proper objections and exceptions."

In Chicago Great Western R. Co. *vs.* McCormick, 200 Fed. 375, 378, Judge Hook said:—

"Complaint is also made of parts of the charge to the jury. The only one of which special mention need be made is that where the Court, in referring to the men and hand cars at the place of derailment, said:—

"'That fact of itself—the fact that he (the engineer could see them, or the fact that he did see them—is not of itself evidence of his contributory negligence.'

"The Court evidently meant that the fact referred to did not by itself establish contributory negligence, and not that it was not evidential.

Moreover, this view of the instruction was expressed in the exception taken by counsel at the time. **The exception did not direct the attention of the Court to the particular point of objection, and on appeal it is too late to enlarge or change it."**

See also

Railway Co. *vs.* Henson, 58 Fed. 531, 532;
St Louis etc. Ry. Co. *vs.* Spencer, 71 Fed. 93, 95;
Drexel *vs.* True, 74 Fed. 12, 14;
Schneider Brg. Co. *vs.* American Co., 77 Fed. 138, 149;
Kresel Co. *vs.* Sun Ins. Co., 88 Fed. 243, 249;
Board *vs.* Sutliff, 97 Fed. 271, 275;
Williams Co. *vs.* Schofield, 125 Fed. 916;
Southern Pac. Co. *vs.* Maloney, 136 Fed. 171;
Hinds *vs.* Roofing Co., 165 Fed. 339;
Hatcher *vs.* Ins. Co., 184 Fed. 23, 26;
Chicago, etc. Ry. *vs.* Frye-Bruhn Co., 184 Fed. 15, 18;
Southern Pac. Co. *vs.* Whitney, 194 Fed. 784, 788;
Mexico Co. *vs.* Larkin, 195 Fed. 495, 496;
Fisher Machine Works *vs.* Dougherty, 231 Fed. 910, 912.

The rulings in other Circuits are similar:—

Cass Co. *vs.* Gibson, 107 Fed. 363, 367;
Lafayette *vs.* Olsen, 108 Fed. 335;
Smith *vs.* Hopkins, 120 Fed. 921, 923;
Butte Mining Co. *vs.* Montana Ore Co., 121 Fed. 524, 527;
Porter *vs.* Buckley, 147 Fed. 140, 146;
Pennsylvania Co. *vs.* Sheeley, 221 Fed. 901, 905.

See also

Railroad Co. *vs.* Varnell, 98 U. S. 479;
Mobile etc. R. Co. *vs.* Jurey, 111 U. S. 584, 596;
Stewart *vs.* Wyoming Ranch Co., 128 U. S. 383, 390;

Jacobs *vs.* Southern Ry. Co., 241 U. S. 229, 237;
McDermott *vs.* Severe, 202 U. S. 600, 610;
U. S. *vs.* Fidelity Co., 236 U. S. 512, 529 (gude);
Guerini Stone Co. *vs.* Carlin Co., 248 U. S. 334, 348;
Fillippon *vs.* Albion Vein Slate Co., 250 U. S. 76, 82.

In Robinson *vs.* Van Hooser, 196 Fed. 620, 626, the Circuit Court of Appeals for the Sixth Circuit said:—

> "Defendants complain of a remark made by the Court to the jury, after it had announced that it could not agree. It was an inquiry whether an agreement could be reached as to any of the defendants **and a statement that it was almost a necessity that the jury should reach a verdict if it could.** The Court had rightly instructed the jury that it could find against less than all of the defendants, if the testimony did not justify a finding against all of them. Although counsel seem to have been present, no exception was taken, and the matter cannot be reviewed on error."

In Drumm-Flato Commission Co. *vs.* Edmission, 208 U. S. 534, 540, Mr. Justice M'Kenna said:—

> "Plaintiffs in error finally complain as ground of error of certain remarks by the Court which, it is contended, were prejudicial. The Supreme Court replied to this assignment of error that no objection had been taken to the remarks complained of. Counsel now say that to have made objection would have made 'a bad matter much worse.' But we cannot accept the excuse. We have examined the remarks complained of, and we do not think they had the misleading strength that is attributed to them. At any rate, it was the duty of counsel to object to them, and if then the Court made matters worse, or did not correct what was misleading or prejudicial, its action would be subject to review."

As to the effect of Rules 10 and 11 of the Circuit Court of Appeals, and Rule 4 of this Court, requiring the distinct statement in the bill of exceptions of the matters of law to be raised, and prohibiting the enlargement of an exception by the assignment of error, or of the exception and assignment by the argument, see also:—

Stewart *vs.* Morris, 96 Fed. 703, 705;
Columbus Co. *vs.* Crane Co., 98 Fed. 946, 951;
Louisville etc. Co. *vs.* McClish, 115 Fed. 268, 273;
U. S. *vs.* Rossi, 133 Fed. 380, 382;
Yazoo etc. Ry. Co. *vs.* Wright, 207 Fed. 281, 289.

Neither the exception taken at the time, the motion for judgment non obstante veredicto, nor even the assignment of errors contains any allusion whatever to the "matter of law" or to the specific ground for objection now sought to be raised.

The first objection, exception, statement, or intimation that the Trial Court's supplemental instructions amounted to a coercion of the jury, or to a direction of a verdict, or to a withdrawal from the jury of the main issue of fact—restraint of commerce *versus* popular uprising—previously submitted, **is found in the Brief of Counsel** in the Circuit Court of Appeals.

In Judge Hook's dissenting opinion he dismisses the absence of a proper exception on the ground that the Amendment to Section 269 of the Judicial Code, approved February 26, 1919, between the argument of the case in the Circuit Court of Appeals (December, 1918) and the decision by that Court (April 28, 1919), made such an exception unnecessary.

Judge Hook considers that the intention of counsel was evident and that the trial Court understood it.

Judges Sanborn and Trieber, however, regard the exception as clearly directed to another distinct phase of the supplemental charge, and not at all at the possibility of its being a "peremptory instruction to return a verdict against the defendants."

The mere fact that two out of the three judges of the Appellate Court differ with Judge Hook's view of the purpose and effect of the exception is of itself a conclusive demonstration that the exception was not clear enough to appraise the trial Judge that defendant's counsel considered the charge coercive. Certainly no exception can be considered clear or direct which two out of three appellate judges regard as covering solely another matter.

Judge Hook further regards the Amendment to Section 269 as making a most radical change in appellate practice and as practically dispensing with the necessity of specific exceptions.

It is submitted, however, that such was not intended to be the effect of the Amendment, the real purpose of which was not to modify the established rule requiring a timely exception to enable the Trial Judge to correct his charge, but to prevent the reversal of judgments on account of non-prejudicial errors covered by proper exceptions.

This recent act has no application to the question now under discussion, **but is precisely applicable to the question of misjoinder,** presently to be discussed.

A recent decision of the Circuit Court of Appeals for the Second Circuit fully supports our position.

In Storgard *vs.* France & Canada S. S. Corp. 263 Fed. 545, 546, counsel for the plaintiff in error urged a reversal because of a portion of the charge to which no proper exception was taken.

The Court (Ward, Rogers and Hough C. J.) disposed of this contention as follows:—

"It is contended that we may nevertheless consider the question in virtue of Section 269 of the Judicial Code, as amended by Act. Feb. 26, 1919 (Comp. St. Ann. Supp. 1919, 1246), which reads:

> "'Section 269: All of the said courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new

trials have usually been granted in courts of law. On the hearing of any appeal, *certiorari*, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties.'

"We do not construe the section as authorizing appellate courts to decide on the whole record whether exceptions have been taken or not. **The mischief it was intended to correct is just the opposite of overlooking defects due to negligence, ignorance or inadvertence, viz., the reversal of judgments because of errors, defects or exceptions which, though raised with technical accuracy, do not affect substantial rights."**

Rule 4 of this Court specifically prohibits the consideration of errors in the charge on a mere general exception and clearly the Act of 1919 was not intended to make any change in the long established practice of the Appellate Courts in refusing to reverse a judgment for an error in the charge, which, at the time it was delivered, counsel did not regard as important enough to prompt them to call the Court's specific attention to it.

Certainly no one, reading the Record in this case, can conclude that throughout the Trial, any one of the four counsel for the defendants showed lack of assiduity in protecting the rights of their clients by a proper exception whenever there was the remotest possibility of a reversible error.

When, after Judge Elliott's supplemental charge they merely renewed their exception to his reference to the "great conspiracy" and to the connection of the Union with it, it was because they found no other fault with the charge.

If, at the time, it had occurred to them that the Trial

Judge was overstepping his proper functions and was coercing the jury, they would have been instantly on their feet with protests and exceptions.

The effect of a charge on a jury depends to a great extent on conditions at the moment, and on the manner in which the charge is delivered. This can never be exactly appreciated by an appellate tribunal, as it can by those present at the time. Hence the wise rule that a judgment will not be reversed because of a point in a Trial Judge's charge which at the time did not strike counsel as exceptionable.

(3) *The Facts Justified Binding Instructions on the Matters as to which the Trial Judge Expressed his Opinion.*

In support of their contention, thus raised for the first time in the writ of error,—that the supplemental instruction amounted to a binding instruction for the plaintiffs, it was of course incumbent on counsel for plaintiffs in error to point to testimony which clearly substantiated the issues which they contend were thus taken from the jury. If their testimony was not sufficient to raise such issues, there could have been no error in the trial Judge's statement of his opinion on the facts, even without the qualification that the determination of the facts was for the jury, and even if defendants had taken a proper exception.

The conclusions which Judge Elliott told the jury they were overwhelmingly justified in reaching from the evidence were "that it was the policy and therefore the agreement for years of this national organization to prevent mining of non-union coal for the unlawful purposes named in this complaint that it might not come into competition with union mined coal; that there is no question in this Court's mind but that that strike was ordered down there for that purpose to prevent the mining of non-union coal in these plaintiffs' mines; that the strike was called by those who were the instrumentality of the greater organization, the general organizations, the defendants, and their act was its act, and

that they put into motion the force that destroyed this property, and that force was put into motion for the purpose of preventing the mining of that coal, the shipping of that coal, the running of these mines. Why, this Court has not a thought that there would ever have been any trouble there if it had not been for the prevention of the mining of non-union coal."

In the opinion of the Circuit Court of Appeals, after noting a number of conclusions of fact which the Court holds there was substantial evidence to warrant the jury in finding, the Court says:—

> **"It is established beyond question** that the property of the plaintiffs was burned and their mines destroyed in the course of the strike, for the purpose of carrying out the aims, objects and purposes of the national organization, and its objects were thereby attained to the extent of the elimination of the non-union mines of these plaintiffs by the destruction of their property, and thereby kept non-union coal, produced and intended to be produced from these mines, out of interstate commerce."

The majority of the Circuit Court of Appeals, after reading the Record, apparently agree with Judge Elliott that there was no substantial conflict in the testimony on the questions of fact on which Judge Elliott thus expressed his opinion.

Counsel for plaintiffs in error in discussing this question, point out the errors of fact which they contend Judge Elliott made in his charge, as follows (Brief of plaintiffs-in-error, pages 154–155):—

> "The strike was not called by the International Association."

Judge Elliott did not say that it was, but that it "was called by those who were the instrumentality of the greater organization."

> "As to all the mines but the Coronado Mines, there was no strike at all, but a lock-out. There was no riot at the Coronado Mines where alone there was a strike; the property destroyed at that mine was destroyed days later under circumstances where the responsibility is not at all well defined. The International Association did not authorize the strike and did not sanction it."

These, then, are the issues of fact which counsel contend were presented by the evidence and on which they claim that Judge Elliott gave peremptory instructions to the jury.

Judge Elliott gave no supplemental instructions whatever on the question of damages. There is therefore no question at all but that the jury were entirely free to disregard the damages at Coronado if they did not believe that it was the result of the conspiracy.

As to the alleged issue of fact that this was a lock-out and not a strike, this is a reappearance of the red herring which, throughout the entire trial, counsel who tried the case for defendants were continually trying to draw across their trail.

It was entirely immaterial whether the affair at Prairie Creek was a strike or a lock-out. In neither case did the Union have any right to destroy our property and murder our employees.

The very fact that the Union insisted so strenuously throughout the trial that this question was a relevant one in this case gives a significant insight into their psychology.

The officers and members of this organization have shown beyond dispute that in spite of hypocritical protestations to the contrary in their appeals to the public, they have no real regard whatever for the constituted authorities or for the law of the land.

They firmly believed that if they could show that their members were locked out of the Bache operations, if they could raise an industrial grievance against these

companies, they had shown a complete justification for all that they did,—intimidation, assault, lies, arson, murder.

There was no substantial testimony that the strike at Prairie Creek was a lockout and not a strike, only the bare conclusion to that effect by certain of the Union officers and members, for the most part is response to direct suggestions by Mr. Covington.

The complaint alleged that it was a strike in unmistakable terms.

There are three possible conditions in dealing with the Union.

A closed shop where only Union men may be employed.

An open shop where all are employed, be they Union men or Non-Union.

A **lock-out** operation where **no** Union men will be employed.

There is not a word in the complaint or in the testimony to the effect that the operation at Prairie Creek after March 28th was of the latter class.

Mr. Bache testified in answer to questions by Mr. Covington (Rec., 2330–2331):—

"Q. Do you mean to say that the miners came out on strike at No. 4?

"A. That is what I call it and I take their phraseology.

* * * * * * *

"Q. What did they strike for?

"A. Because we were working men not members of the Union.

"Q. Didn't you allege in your original complaint filed in this case that you decided to go on the open shop basis and closed down as a Union shop on the 28th of March, 1914, and you closed down No. 4?

"A. That is the time we stopped work with the Union and started open shop.

"Q. Yes, but now you say you had a strike. If you had no strike, you closed your mine down just as you said in that complaint?

"A. No, we stopped mining on one basis and started the other. **We told all the men down there we would be glad to have them come to work and to stay at work."**

This testimony was uncontradicted, and yet only a very few of the Union men returned to work on April 4th, some of whom were expelled from the Union on that account (2465, 2399) and one of whom, Sylsberry, was murdered by them probably for that reason (1202, 1663).

When Mr. Bache referred to "their own phraseology" he doubtless had in mind the many references in the official reports of the Union officers to the "Prairie Creek Strike" (1462, 1928, 2391, 2396, 2436, 2468, 2470, 2648; see also 1637, 2661).

The second issue which the plaintiffs in error suggest is that "the International Association did not authorize the strike and did not sanction it."

Whether or not the National Association was responsible for the acts of the District officers and members was really a question of law under the undisputed evidence, which the trial Court answered correctly.

There was no substantial evidence offered by defendants to contradict the reiterated statements in their own Official Journal and in the reports of their conventions and Executive Board meetings, not to speak of the declarations of the participants, that plaintiffs' property and business had been destroyed by those who were the representatives of the United Mine Workers in order to carry out its aims, objects and purposes, and that the Union approved of what they had done.

In his principal charge, to which no exceptions were taken except as regards the liability of the National Association for acts of the Branches, the only question that the trial Judge left to the jury was whether the mines had been destroyed with the intent of restraining interstate commerce or because of the alleged outrages committed by the Company men.

There was no question but what all had been done by Union men in the name of the Union. The only question was with what intent it had been done.

The uncontradicted testimony showed, however, that the Union had deliberately burned up several loaded cars of coal standing on the tracks and already billed to points in other states.

In such case it was immaterial with what intent the cars were burned, since the necessary, inevitable and immediate result was a direct interference with interstate commerce, which result the parties must be conclusively charged with having intended.

U. S. *vs.* Reading Co., 226 U. S. 324;
U. S. *vs.* Patten, 226 U. S. 525.

There was really but one issue submitted to the jury,—restraint of commerce *vs* spontaneous uprising of the community.

Counsel for plaintiffs in error have not referred to any testimony which would have sustained such a verdict on this issue and we may properly assume that the only issues of fact which they regard as sustained by the evidence are those referred to on pages 154-155 of their brief.

The evidence offered in support of defendants' contention that the battle of July 17th was not the result of an effort to prevent the shipment of non-union coal, but was a spontaneous uprising of a community indignant by the outrages of the Company employees would not have supported a verdict.

Except for the incident as to Nick Birkell and as to the alleged proposals to the little girls, hereafter discussed, **there was in defendants' testimony no evidence whatever that any company employee had ever laid a hand on a private citizen or shot at or threatened or even definitely insulted any one.**

Not one arrest was made during the entire three months and a half, by the local police officers, on which the assiduous Prosecuting Attorney secured a conviction.

Not one of the many witnesses as to the Frogtown scare knew who had fired the shots or could say from personal knowledged that Frogtown had not been shot up by Slankard and Cluck, as the latter later admitted to Goacher, and as Slankard, who was in Court, was not called to deny.

The defendants in error did not have the means to employ enough guards to overrun the community or to cause the slightest practical danger in Frogtown, much less in Hartford or Huntingdon.

They would not have done so if they could. They could not if they would.

All they and their employees wanted was to be let alone and to be allowed, in peace, to ship their coal in interstate commerce.

The United Mine Workers Journal itself admitted, in an article published as late as November 19th, 1914, that "investigation has not yet disclosed" whether or not it was the Company men who shot up Frogtown (Rec., 2403).

Not one company employee was identified as having ever created the slightest disturbance either in Frogtown or in any of the neighboring towns.

Not one member of the United Mine Workers, and not one representative of the "farmers, bankers, lawyers and ministers" (1420) **whom defendants' counsel contended had made up the "inflamed populace" which destroyed the property, was called to the stand to testify that he was incited by the outrages of the company guards and not by the importunities of the officers of the Union.**

Why did they not call some of them to tell why they did it? Their own witnesses admitted that many hundred persons took part in the attack.

When such participants testified in the contempt proceedings (Stewart U. S. 236 Fed. 838), they did not rely upon the present excuse for destroying the property, but merely denied one after the other, that they knew anything about it.

Birkell testified that about a week before the battle he had been arrested by two company employees at night on the highway when going home to his mother from a visit to his sweetheart, and was turned over by them to the United States Marshal who kept him for the night and the next day took him to Fort Smith.

He did not claim, however, that he had been in any way mistreated by the United States Marshals or by the guards, who had taken him into custody near the electric light pole, where, as the uncontradicted testimony of plaintiffs showed, the supply wires had been recently cut a number of times.

Was this arrest, which Birkell had never brought to the attention of the willing and assiduous local peace officers, a possible cause of a popular uprising to destroy the mines? Could such an uprising possibly have resulted from the fact that on one or two occasions the employees were seen visiting a "booze-joint" conducted in the center of the Union stronghold Frogtown, or that two women of shady reputation were seen going into the "bull pen?"

Finally, the plaintiffs in error relied on the testimony of the six little girls, as disclosing a condition so intolerable as to lead not only the immediate neighborhood but the citizenship of the entire surrounding community to come together and destroy the mines.

If, as they did not, the jury had by a verdict for defendants found that the latter was the fact, would this Court have upheld the verdict? We feel sure that it would not, since the evidence was not sufficient to sustain it.

The six little girls were the sister of Charlie Johnson (2584, 2589) the two sisters of Ves Howard (2578, 2592), the daughter of John Mastell (the Union Quartermaster-general), the sister of John Manick (2613) and one other who alone did not seem to have any identified law-breaking male relatives (2584). In April 1914, the oldest of these little girls (Jessie Howard Thompson) was thirteen (2594). Four of them were either eleven or twelve (2589, 2578, 2612, 2583) and the sixth was not quite eleven (2608)

They swore that on certain occasions men whom they believed to be employees of the Company had made indecent proposals to them.

The dates of these occurrences were fixed by the witnesses at various times, **but not one within three months prior to July 17th.**

The first said that it was in March or April, certainly before their school closed on April 17th (2578–2584).

The second testified to the same incident as occurring "about the last of March, between March and April," before school was out and school was out the 17th of April" (2584).

The third also swore to an incident which took place while she was on the way to school, which she remembered had closed on April 17th (2586).

The fourth described an incident while she was attending school (2592) but fixed the time in the following October or November when school reconvened in the fall (2595).

The fifth identified the time as between April 1st and April 17th when the school closed (2609).

Finally Mary Manick swore to an improper proposal to her when she was going to school (2610), and also swore that "some time in April," "before April 17th," when school closed (2613), Mr. Denman had come riding along on a red horse and took from his pocket and threw at her five or six rocks, "some of them as big as your fist" (2610–2614).

The admitted fact being that Mr. Denman was in Philadelphia from December, 1913, to June, 1914, counsel for defendants ingeniously attempted to escape from the boomerang which this exposition of their testimony would obviously bring back to them, with the following result (2614):—

"Re-direct examination.

"By MR. GRANT:

"Q. Miss Manick, when talking about Mr. Denman awhile ago, did you have reference to this Mr. Denman sitting there (indicating), or did you mean boys working over there at the property.

"A. Some boys.

"MR. MCDONOUGH:—That is leading.

"THE COURT:—Yes, that is leading. The Denman boys would not be riding a horse. The Court does not wish to be trifled with.

"MR. GRANT:—That is all.

"(Witness excused.)"

The testimony of these little girls as to the cause of a popular outburst resulting in the destruction of the mines on July 17th, is not merely grossly improbable; **it is absolutely impossible.**

In the first place their story is incredible on its face.

There were admittedly no company employees at the mines from April 6th to April 15th. After the Riot none of them dared to go back until after the temporary injunction had been granted. It was only on April 15th, that John Shaleen ventured back with a gang of men to pump out the mines.

Before April 6th the Company ran non-union but two days, April 4th and April 6th.

April 4th was Saturday and April 5th Sunday, both school holidays.

On April 4th, 5th and 6th, the "guards" were very busy in camp, and the little girls' brothers and fathers were on the spot.

After April 15th the "guards" were still in the Hospital at Fort Smith until subsequent to the closing of school on April 17th.

The little girls were but children, eleven and twelve years old.

They did not report the occurrences to their families.

They all had fathers and brothers who were not merely ready, but eager, to find an excuse to attack the "scabs" and to have them arrested.

There were close at hand officers of the peace who were heart and soul in sympathy with the Union and who made use of every slightest pretext to issue warrants for the arrest of the guards and employees.

The entire community was under the complete control of the United Mine Workers. The votes of the United Mine Workers had elected all the officers then in power

and would elect all those to come. The President of District 21 was daily and hourly with the Prosecuting Attorney. The slightest disturbances in the Company's property were promptly investigated by them.

An accidental shot at the mines brought both Stewart and Prosecutor Little down post haste in the hope of securing some plausible ground for prosecuting the employees (1522, 1523).

All kinds of flimsy charges were invented by Union men in order to give trouble to the Company and to prevent new employees from coming.

If the Company men had made such proposals to these children, it is absolutely inconceivable that they would not have been promptly taken into custody by Slankard, Philpot, Little, the two Hulseys, Fitzgerald, Davis, or some other of the local Union officers of the peace.

Furthermore, it is entirely impossible that these occurrences, happening as they did in every case prior to April 17th, could have been the cause of the attack three whole months later.

Not a thing happened in the meantime which could have provoked the attack, except only the fact that **the mines were operating Non-Union, and on July 17th had commenced to ship coal.**

All defendants' testimony as to the Frogtown and Hartford scares showed as clear as day that the families of the miners were all moved away so as to be out of the battle zone. Every witness called by the other side as to the Frogtown shooting and exodus proved our case.

Under the foregoing facts, without a single word of testimony offered by defendants from the hundreds of available participants that he had ever heard of or been moved to violence by a single unlawful act by a single company employe, would this Court hold that a "reasonable man" could reach an "honest conclusion" that the moving force of the attack was not the United Mine Workers but was something which was suggested and testified to solely by the guess or assertion of counsel for defendants?

If the jury, moved by the eloquence of counsel for

defendants, or by sympathy for the workingman, or by prejudice against corporations or what not, had rendered a verdict for defendants, would this Court sustain it?

If not, it would have been proper for the trial Court to give binding instructions for plaintiffs, leaving to them only the question of damages, and no error can be predicated on any part of his instructions.

> Grimes Dry Goods Co. *vs.* Malcolm, 58 Fed. 670;
> Bank *vs.* Western Union Co., 141 Fed. 522.

Out of the mouths of the officers, representatives, and members of the United Mine Workers, and from the pages of its Official Organ, we have shown that the Union intentionally caused the destruction of our property.

Was it proper to allow the jury to hazard a mere wild guess,—inference on inference on inference—, that this might possibly have resulted from some other cause, **in the absence of the testimony of a single participant that such cause had anything whatever to do with it?**

> Haskell *vs.* Columbus Trust Co., 207 Fed. 322.
> Atchison etc. Ry. *vs.* De Sedillo, 219 Fed. 686.
> Ewert *vs.* Beck, 235 Fed. 513.
> Patton *vs.* U. S., 179 U. S. 658.

We submit, therefore, that if the jury had found a verdict for defendants, this must have been set aside as not sustained by the testimony.

The majority of the Circuit Court of Appeals holds that the evidence established the conspiracy "practically beyond question."

In view of this there could be no prejudicial error in what the Court said to the jury, even if he had not clearly instructed them, as he did, that they were not bound by his opinion.

Even on the question of damages, which was left to the jury, there was no conflict of evidence except as between plaintiffs' own witnesses as to the value of the property destroyed.

The verdict was less than one-third of the lowest amount fixed by any witness.

SEVENTH.—**There was no Error in the Joinder of Parties or Causes of Action.**

(1) *The Alleged Error was not Substantial.*

Section 269 of the Judicial Code as amended by the Act of February 26th, 1919 (Comp. St. Ann, Supp. 1919, page 1246), provides as follows:—

> "On the hearing of any appeal, *certiorari*, writ of error, or motion for a new trial, in any case, civil or criminal, the Court shall give judgment after an examination of the entire record before the Court, **without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties.**"

In his dissenting opinion on the question of Judge Elliott's supplemental charge, Judge Hook relies on this provision as relieving the record of the necessity of a proper exception and as applicable to cases tried and argued in the Appellate Court before its passage.

Counsel for plaintiffs in error also rely on it as applicable to the present proceedings.

As we have seen however, the purpose and effect of this provision is not to do away with the necessity of a proper exception.

What the Act directs the Appellate Court to disregard is the presence of an unsubstantial exception and not the absence of a substantial one.

We may assume with Judge Hook and with the plaintiffs in error that this Act applies to the present proceedings, but we differ from them as to the point in this case to which it applies.

While it in no way modifies the rule requiring a timely and specific exception to the Judge's charge, it is directly applicable to the question of misjoinder, which is exactly the kind of a question which it was obviously intended to cover.

Counsel for plaintiffs in error in their endeavor to explain the Arkansas decisions which sanction the practice followed in the case at bar, take particular pains on page

173 of their brief to distinguish them from the Federal decisions on the ground that the Arkansas Code contained a provision requiring the Appellate Court to disregard harmless errors, while the Federal Statutes, under which Federal decisions arose, contained no such statute.

As we shall presently show, the provision in the Arkansas Code referred to was not merely one covering appellate procedure, but specifically covered procedure in the trial Court to which the Conformity Act applied. The passage, however, by Congress, of a harmless error statute at least as broad as that in the Arkansas Code cuts from under plaintiffs in error the whole basis for their attempted distinction.

Plaintiffs in error have wholly failed to point out a single substantial right of theirs which was adversely affected by the joinder of what they contend were separate causes of action, or by the rendering of a lump verdict.

While the foregoing would seem to be sufficient to dispose conclusively of this question, the joinder and verdict were properly sustained by the trial Judge and by the Circuit Court of Appeals without regard to the Act of February 26, 1919.

As pointed out by the Circuit Court of Appeals, defendants did not claim but one peremptory challenge, and the payment of this judgment will be a bar to all the nine alleged causes of action.

(2) *The Question of Misjoinder was not Properly Raised.*

The only specification of error which now raises the question of misjoinder is the third (Brief of plaintiffs in error p. 71) as follows:—

> "The Circuit Court of Appeals erred in sustaining the District Court in overruling the separate motions of the plaintiffs in error **to strike from the third amended complaint the name of each of the plaintiffs and their causes of action,** said motion being

made on the ground that the said plaintiffs had not a community of interest in the relief sought and that therefore there was a misjoinder of parties plaintiff and causes of action."

We confidently assert that plaintiffs in error have never really and honestly desired to have the causes of action separated, since this would have entailed a great deal of unnecessary labor and expense on them as well as on us, with absolutely no corresponding advantage to either. This is clearly shown, we submit, by the procedure which they have followed in connection with the alleged error in joinder.

Under the Arkansas practice misjoinder cannot be raised by demurrer, but can be raised only by a motion to strike out the cause of action or party improperly joined with others, or, where the causes of action are of equal status, by a motion to require plaintiff to elect as between them.

Jett *vs.* Maxfield Co. 80 Ark. 167.
Weigel *vs.* McClosky 113 Ark. 1.

The case at bar was obviously one in which the proper procedure was a motion to require an election.

Instead of employing this proper procedure, the plaintiffs merely took steps which they hoped might result in a judgment for them,—demurrers, a single motion *in solido* to strike out the names of all nine companies as well as those of the two receivers, leaving no plaintiffs at all, and a motion for judgment *non obstante veredicto.*

The only error specified is in denying the motion *in solido* to strike out all the plaintiffs and all the causes of action, leaving no plaintiff and no cause of action at all.

The distinction between a motion to strike out one invalid cause of action improperly joined with another, and a motion to strike out all of nine good causes of action, is obvious.

Kirby's Digest provides (Sec. 6081):—

"The Court, at any time before the defense shall, on motion of the defendant, strike out of the complaint, **any** cause or causes of action **improperly joined with others.**"

This did not authorize a motion *in solido* to strike out **all** the plaintiffs, but merely a motion to strike out causes improperly joined, leaving the "others" to be prosecuted by the plaintiffs remaining.

That the question was not properly raised by the demurrers is apparently admitted by plaintiffs in error.

Clearly it was not properly raised by a motion for a non-suit or for judgment *non obstante veredicto*, neither of which were designed to correct the alleged error any more that was their demurrer.

Copper River Ry *vs.* Henry, 211 Fed. 459, 462.

Certainly it was not properly raised by a single motion to strike out the names of all the nine companies and of the two receivers as well, leaving no plaintiffs at all in the case.

Gaillard *vs.* Cantini, 76 Fed. 699, 702 (2nd par. of syllabus);

Quarry Co. *vs.* Construction Co., 151 N. C. 345.

In any possible view of the question, plaintiffs were entitled to have at least one company left as a plaintiff.

The trial Court, even if it had concluded, in the exercise of its discretion, that the causes of action should have been separated or the plaintiffs required to elect, would have been entirely right in denying the motion, since the Court was not bound to split up the motion.

It is a principle of appellate jurisprudence too familiar to require citation that where a single exception is taken to a ruling which involves a number of different propositions, the exception is invalid if the Court was right on any one.

U. S. *vs.* Hough, 103. U. S. 71;
Insurance Co. *vs.* Smith, 124 U. S. 405, 424;
Bogk *vs.* Gassert, 149 U. S. 17, 26;
Texas & Pac. R. Co. *vs.* Humble, 181 U. S. 57;
Sweeney *vs.* Irving, 228 U. S. 233.
See also Turner *vs.* Talbot, 30 Ark. 312;
Cairo Railroad *vs.* Parks, 32 Ark. 131.

Neither the law nor good pleading will permit defendants, in a case where a good cause of action has been stated, to make one solid motion to strike out all the plaintiffs.

This contention on our part is not one merely based on a technicality. There could be no better illustration of the advantage of the insistence on orderly procedure than this.

Plaintiffs in error have deliberately avoided the proper procedure to secure what they obviously did not want,—the separation of the actions—while at the same time manoeuvering to gain a technical advantage and thus defeat our claim, to which they had no just defense.

(3) *There was no Misjoinder.*

Aside, however, from any question of whether the alleged error is substantial or whether the question was properly raised in the Court below, the procedure was entirely proper.

The opinion of the Circuit Court of Appeals was written by Judge Trieber of the Eastern District of Arkansas.

The Court, familiar with local practice, has fully sustained the rulings of the trial judge relative to misjoinder and the rendering of the single verdict.

On the first question, the Court said:—

> "That under the Code of Practice of the State of Arkansas, in which state the wrongs were committed and this cause tried, it was proper to join all the plaintiff's causes of action, all of them arising

out of the same torts, committed by the same persons at the same time, and in pursuance of the same alleged conspiracy, has been determined by the Supreme Court of the State ever since the enactment of the Act of May 11, 1905. St. Louis, I. M. & S. Ry. Co. *vs.* Broomfield, 83 Ark. 288; Southern Anthracite Coal Co. *vs.* Bowen, 93 Ark. 140; Hargis *vs.* Lawrence, 135 Ark. 323, 204 S. W. 755." (The last decision is erroneously cited by the Court from 136 Ark.)

Plaintiffs in error apparently concede that if this were a suit in the Arkansas Courts, their contention with regard to misjoinder would be without foundation. They apparently rely solely on the position that the Conformity Act does not apply to this case and that in a question involving the proper joinder of plaintiffs and causes of action, a Federal Court, sitting in Arkansas, is not bound by, and may not follow the State Practice.

The present Arkansas procedure relative to joinder has developed during the past thirteen years.

Prior to 1905 the strict rule requiring separate causes of action to be raised by separate suits was enforced in Arkansas, but in 1905 there was incorporated into the Arkansas Code the Act of May 11th, 1905, page 798, which provides as follows:—

> "When causes of action **of a like nature or relative to the same question** are pending before any of the Circuit or Chancery Courts of this State, the Court **may make such orders and rules concerning the proceedings therein** as may be conformable to the usages of Courts for avoiding unnecessary costs or delay in the administration of justice and **may consolidate** said causes when it appears reasonable to do so."

Under the Arkansas Act of 1905 above quoted, the Courts of Arkansas have held, not merely that the

Court may consolidate two like causes of action, but that when plaintiffs have joined in the same suit a number of different causes of action which might have been consolidated had they been brought separately, the trial Court may approve such joinder by refusing to sustain a motion to strike out or to elect, the Court holding that since the cases could have been consolidated if separate actions had been brought, no error affecting the substantial rights of the parties was committed by allowing the suits to go on as joined.

The Act, it will be noted, does not merely authorize a consolidation by the trial Judge, **but also gives him power to make orders and rules concerning the proceedings to avoid costs and delay, etc.**

One of the first cases which came before the Supreme Court of Arkansas involving the construction of this Act of 1905 was St. Louis, etc., R. Co. *vs.* Broomfield, 83 Ark. 288. Here five laborers, members of a section crew, who had all been discharged at the same time, had each brought suit for statutory penalties for failure to pay their wages for more than a week after their discharge. Their cases were consolidated by the trial Court and the case is reported under one caption. The Supreme Court upheld the consolidation.

This was a simple case of consolidating a number of distinct causes of action growing out of the same transaction after separate suits had been brought on each of them. The next case, however, carried the practice beyond the simple matter of consolidation, and established the principle that causes of action which might be consolidated may be brought originally as one suit.

Mahoney *vs.* Roberts, 86 Ark. 130, was a single action against three defendants on what appeared to be two different causes of action, the one against one defendant for breach of contract, and the other against the other two defendants for a tort, both causes of action, however, arising out of the same transaction.

Kirby's Arkansas Digest contains the following provisions:—

"SEC. 6130. In construing a pleading for the purpose of determining its effects, its allegations shall be liberally construed, with a view to substantial justice between the parties."

"SEC. 6148. The Court **must, in every stage of an action,** disregard any error or defect in the proceedings **which does not affect the substantial rights** of the adverse party; * * * "

The Supreme Court of Arkansas held, on the authority of St. Louis, etc., R. Co. *vs.* Broomfield, 83 Ark. 288 above cited, that if separate actions had been brought, the Court could have compelled the causes to be tried as one action, and that therefore the plaintiff might properly adopt this course in the first instance; to refuse to separate the actions, which could then be consolidated, did not affect the substantial rights of the party objecting.

This case established the practice in Arkansas of joining in the same suit a number of distinct causes of action which arose out of the same transaction and which involved the same contentions to establish or disprove them. The practive has been followed in that State ever since and has been consistently approved by the Supreme Court of Arkansas.

Telegraph Co. *vs.* Shofner, 87 Ark. 303;
Ashford *vs.* Richardson, 88 Ark. 124;
Insurance Co. *vs.* Haynie, 91 Ark. 43;
Tillar *vs.* Reynolds, 96 Ark. 358;
Kansas City So. Ry *vs.* Mixon, 107 Ark. 48, 57;
Weigel *vs.* McCloskey, 113 Ark. 1.
Hargis *vs.* Lawrence, 135 Ark. 323.

In Southern Anthracite Coal Co. *vs.* Bowen, 93 Ark. 140, the Court had consolidated, under objection by defendant, two suits by two workmen who had been injured by the same accident. The Supreme Court approved of this action. Under the Arkansas practice, therefore, these suits might and for that matter should have been joined in the first instance.

In Midland Valley R. Co. *vs.* Ennis, 109 Ark. 206, the Court went so far as to hold that a claim by an injured employee under the Federal Employers Liability Act might be joined in the same suit with one for damages from the same accident under the State law, so that the plaintiff might recover on whichever cause of action he could prove, but one recovery, of course, being permitted.

The most recent considerable discussion of the effect of the Arkansas Act of 1905, by the Supreme Court of that State is found in Fidelity, etc., Ins. Co. *et. al.*, *vs.* Friedman, *et. al.*, 117 Ark. 71.

This was an action by an insured and by a mortgagee against eight insurance companies on eight different fire insurance policies. Eight different suits had been brought which, over objection by defendants, were consolidated and tried together.

Defendants contended that they were each entitled to three peremptory challenges, but the trial Court ruled that they were entitled to but three challenges between them.

The Supreme Court of Arkansas sustained the latter contention, refusing to follow the rule in Mutual Ins. Co. *vs.* Hillmon, 145 U. S. 285. The Arkansas Court said that if the contention of the defendant should be sustained one of the principal objects of the statute would be defeated, as there would be an unnecessary consumption of time in choosing the jury. Judge Hart continued as follows:—

> "It may be true that in some cases for special reasons some of the defendants might want to challenge certain jurors which the other defendants might want retained, and *vice versa;* but such matters as these would be properly urged as reasons why the cases should not be consolidated, or as **reasons why the Court abused its discretion in consolidating the cases.**
>
> "We are of opinion that the Act of May 11, 1905, contemplates that, when actions are consolidated

under it, **they shall proceed to trial as one action,** and that the procedure shall be governed by the rules applicable to one action. It follows that, if the case is to be treated as one action, the plaintiffs and defendants are only entitled to three peremptory challenges each under Section 4536 of Kirby's Digest."

We do not of course contend that if the question in the case at bar involved a "substantial right" given by a Federal Statute, the right to challenge jurors, this Court would follow the Arkansas decision.

The case is cited solely for the proposition that under the Arkansas practice, as prescribed by the Supreme Court of that State, a consolidated case **proceeds to trial as one action and that the procedure is thereafter governed by the rules applicable to one action.**

This decision clearly extended the scope of the Act and modified certain early dicta by the Court as to the effect of consolidation. It disposes conclusively, as far as the Arkansas practice is concerned, of any technical objection to the present practice based on a difference of procedure between a consolidation of different suits separately brought, and the joining of all the claims in one suit in the beginning.

The late Arkansas decisions follow the principle above laid down.

Thus in Williamson *vs.* O'Dwyer Co., 127 Ark. 530, a single verdict was sustained on two causes of action joined as one under the Arkansas practice.

The development of the practice as above outlined consisted of three steps: first, the passage of the Act of 1905, which changed the common law practice theretofore prevailing and permitted the trial Court, in its discretion, to consolidate a number of causes of action of a like nature or relative to the same question.

St. Louis, etc., Ry. *vs.* Broomfield, 83 Ark. 288.

So far, the practice would clearly have permitted the

trial Court to consolidate actions brought by the several companies of which plaintiffs were Receivers.

Next, the Arkansas Court applied to the Act of 1905 the provisions of Section 6148 of the Code, prescribing that "the Court **must, in every stage of an action** disregard any error or defect in the proceedings which does not affect the substantial rights of the adverse party," and held that where plaintiffs to "avoid unnecessary costs or delay" joined in one action several suits which the trial Court in its discretion might have consolidated, it was proper to disregard the short cut thus achieved, and allow the action to proceed, unless the "adverse party" could point out to the Trial Court some "substantial rights" which would be affected by such procedure, and which would lead the Court to exercise its discretion to require the separation of the actions.

Mahoney *vs.* Roberts, 86 Ark. 130.

Under this extension of the procedure, the bringing of but one suit in the case at bar was clearly the proper practice, as it has resulted in the saving of the enormous amount of costs, labor, and expense, which would necessarily have been incident to preparing nine sets of papers and serving nine different times the numerous individuals and associations named as defendants.

Kirby's Digest contains the following provisions:—

> "SEC. 6084. When any plaintiff shall bring in the same Court several suits against the same defendant or defendants, for causes of action that may be joined, the plaintiff shall recover only the costs of one action; and the costs of the other actions shall be adjudged against him unless sufficient reason appear to the Court for bringing several actions."

The trial Judge might, in his discretion, have consolidated nine suits of this kind had they been brought separately. His discretion, under the practice in that State also extends to approving, as he has done here, the

joinder of the claims in one action, thus avoiding very considerable amount of "unnecessary costs or delay in the administration of justice."

In the saving of costs, attorney's fees and time, the joinder was a benefit to plaintiffs in error.

Woollacott *vs.* Meekin, 151 Cal. 701.

The trial Judge was bound under Section 6148 of Kirby's Digest, above quoted, **in every stage of the action,** to disregard any technical objection by the other side that nine suits should have been brought, with nine sets of costs, and then consolidated.

The Arkansas Code provides (Kirby §6005):—

> "All persons having an interest in the subject matter and in obtaining the relief demanded may be joined as parties plaintiff, except where it is otherwise provided."

Certainly each of these nine companies had an interest in the subject matter of the action (see *infra*, pp. 297–302).

See Toomey *vs.* Knobloch, 8 Cal. App. 587.

Still, however, at this second stage in the development of the procedure, it might have been urged that, although the joinder was proper, the Court was still bound to require the jury to bring in separate verdicts.

Passing, for the moment, the fact that defendants failed to raise the latter question at the proper time (which as we shall presently show, is a conclusive answer to the single verdict), the third step, taken in Fidelity Ins. Co. *vs.* Friedman, 117 Ark. 71, still further extended the rule so as to allow the consolidated causes to **"proceed to trial as one action,"** in which **"the procedure shall be governed by the rules applicable to one action."**

Under this procedure, it was, of course, the duty of the trial Court to protect the substantial rights of the defendants, and if, before he submitted the case to the

jury, they had called his attention to any substantial rights which might be adversely affected by a single verdict, he might in his discretion have required separate verdicts.

They did not do so, however, but permitted him, without objection or criticism, to submit to the jury three blank forms of verdict, one for a single verdict for defendants, one for a single verdict against all the defendants, and the third for a single verdict against part of the defendants.

Certainly no abuse of discretion can be predicated on the Court's doing something to which the plaintiffs in error offered no objection, criticism or suggestion, although, as we shall presently show, **such criticism was at the time specifically invited by Judge Elliot.**

Plaintiffs-in-error contend that the Sherman Act itself requires separate suits and quote from the debates in Congress to show that this was intended.

Obviously the Sherman Act was in no way intended to prescribe a procedure to supersede that provided by State practice, but merely gave a right of action to "any person," which included associations as well as corporations, but left the procedure, by which the person might sue, to the local practice.

The amendment proposed by Senator George was to cover only cases of injuries committed by the same defendant against each of several plaintiffs "separately."

One of the items of damage specified by the Sherman Act was the "business" of the injured party, which, particularly when used with the word "property," was obviously intended to cover good-will (see authorities hereafter cited).

The good-will of all these companies was owned jointly by them and not severally, and it was only by a joint action that they could properly recover for its destruction.

Plaintiffs in error further urge that, even though the practice in Arkansas be as we contend, a different practice has been established in the Federal Courts, and that, in

spite of the Conformity Act, the Federal Court is bound to follow the procedure developed in the Federal decisions.

The Arkansas Act of 1905 was copied, it is said, practically word for word, from Section 921 of the Revised Statutes, which the United States Supreme Court had construed differently from the construction placed by the Arkansas Court on the Act of 1905.

There are three answers to this position.

In the first place, as we have heretofore pointed out, the passage of the Act of Congress of February 26, 1919, removes any dissimilarity which could formerly be claimed as existing between the Arkansas and Federal practice.

Second, the statutory procedure in Arkansas in cases of joinder, which, under the Conformity Act, the Federal Courts are bound to follow, is not found solely in the words of the Arkansas Act of 1905. It consists of the Arkansas Statutes, **as construed by the highest Court of that State.**

This Court has held that where it has construed a State Statute in a certain way, on a subject where State Law governed the Federal Courts, and later the highest Court of the State construes it in a different way, in a still later proceeding in the Federal Courts the latter must follow, not their own construction of the State Act, but that of the State Court.

Green *vs.* Neal's Lessee, 6 Pet. 291;
Leffingwell *vs.* Warren, 2 Black 599;
Fairfield *vs.* Gallatin County, 100 U. S. 47.
See also Ward *vs.* American Co., 232 Fed. 119.

Third, the Arkansas procedure in cases of joinder is not contained solely in the Act of 1905, but in that Act **taken together with other provisions of the Arkansas Code, no counterpart of which is found in the Federal Statutes.**

The Arkansas procedure was developed by the Arkansas Court, not merely by an interpretation of the Act of

1905 standing by itself, but in connection with Section 6148 and the other Sections of the Code above quoted, which present an entirely different situation.

The Conformity Act, Section 914 of the Revised Statutes (17 Stat. 197), is as follows:—

> **"The practice, pleadings and forms and modes of proceeding in civil causes,** other than equity and admiralty causes, in the Circuit and District Courts, shall conform, as near as may be, to the practice, pleadings and forms and modes of proceeding existing **at the time** in like causes in the Courts of record of the States within which such Circuit or District Courts are held, any rule of Court to the contrary notwithstanding."

In O'Connell *vs.* Reed, 56 Fed. 531, 535, Judge Sanborn thus stated the purpose of this provision:—

> "The purpose of this Act was to conform the pleading, practice and modes of procedure in the Federal Courts, in actions at law, to those proceedings in the State Courts, under the Codes of the various States in which they were established, **so that lawyers who were practicing in both the State and Federal Courts would be relieved of the burden of studying two systems of pleading and practice."**

When the case of Mutual Ins. Co. *vs.* Hillmon was tried in the Kansas District, this Court had already held in Sawin *vs.* Kenny, 93 U. S. 289, that the Federal Courts were bound to follow the procedure provided by a State Code relative to the joinder of parties.

At that time, however, the Kansas Code did not apparently contain any provision permitting the joinder of causes of action merely because they were causes of a like nature relative to the same question.

Section 921 of the Revised Statutes, however, **permitted** the Federal Court, in its discretion, to consolidate actions.

This Court in the Hillmon Case merely held that Section 921, as construed by it, did not authorize the trial Court to go as far as it there went in treating the consolidated cause as one action, and that, under the above provision, no defendant could be deprived, without his consent, of any right material to its defense, particularly where the right claimed was one specifically given by another Federal law.

Section 819 of the Revised Statutes specifically provided for three peremptory challenges for each party, and it was accordingly held that the joinder over defendant's protest could not deprive the several defendants of that right, expressly given by the Federal statute.

There was apparently no Kansas Statute **"existing at the time"** which authorized the procedure and Section 921 of the Revised Statutes, as construed by the Court, did not go so far as to authorize it. In fact Section 819 prohibited it.

There is, however, **"existing at the time"** an Arkansas Statute which does authorize the procedure here followed. No Federal Statute purports to prevent it.

As pointed out by the Circuit Court of Appeals, defendants in the present case challenged only one juror peremptorily, the record failing to show that defendants made any claim to additional challenges.

There is nothing, moreover, in Section 921 which purports perpetually to limit the trial Court to the powers therein given or to prohibit it from availing itself of such **further** power or discretion in connection with cases of joinder as might subsequently be given by later State Statutes.

When the Act of 1905, as construed by the Arkansas Supreme Court in connection with Sections 6148, 6130, and 6084 of the Code, extended the power and discretion of the trial Court in joinder cases in the State Courts, **the Conformity Act operated to add such additional powers to those already given the Federal Trial Judges under Section 921.**

There is no question of a conflict between State and

Federal Procedure Statutes,—**merely a case of an addition.**

An entirely different question is presented in cases like O'Connell *vs.* Reed, 56 Fed. 536, or Holt *vs.* Bergevin, 60 Fed. 1, where the question is one **not of Federal Procedure but of Federal Jurisdiction.**

No State statute, however specific, could enable a plaintiff, who had a cause of action wherein the matter involved was less than that required to get into the United States Court, to acquire Federal jurisdiction merely by virtue of such State law.

The distinction is between cases involving a conflict of State Procedure and Federal Jurisdiction, and those involving merely a supplement of Federal Procedure by State Procedure.

There is a further obvious distinction also in cases like Union Pac. R. Co. *vs.* Jones, 49 Fed. 343 where the **plaintiffs** object to having their separate recoveries intermingled. It is one thing for **plaintiffs** to raise a timely objection to this but quite another thing for **defendant** to attempt to raise the question after the verdict has been rendered. The first case may involve the invasion of a substantial right, while the second does not.

The case at bar is analogous to the cases arising under the Employers' Liability Act.

There this Court held that there need be no apportionment of the damages because the law provided a method for this.

In the case at bar, as in those cases, the law—the Court administering the Receivership—will take care of the distributing the fund recovered, and plaintiffs in error need give themselves no concern whatever about it.

The practical distinction between the objection to a single verdict by the defendant or by one of the plaintiffs is also illustrated by two of these Federal Employers' Liability cases.

In Gulf etc. R. Co. *vs.* McGinniss, 228 U. S. 173, an

apportioned verdict rendered with plaintiff's approval was apparently sanctioned by this Court, although in the following cases, where there was no apportionment, it held that defendant could not object to this, in spite of the fact that the single verdict would not enable the defendant, on appeal, to show that one plaintiff had got more than he was entitled to under the law and another less.

Central R. Co. *vs.* White, 238 U. S. 507;
Ches. & Ohio R. Co. *vs.* Kelly, 241 U. S. 485.

In Kansas City Southern Ry. Co. *vs.* Leslie, 238 U. S. 599, 603, this Court sustained a lump verdict under the Employers' Liability Act in a suit joining two separate and distinct causes of action, the one for the benefit of the estate of the deceased, and the other for the next of kin, on the ground that this was sanctioned by the local practice in Arkansas, where the suit arose.

That the Conformity Act is applicable to this case requires no authority to demonstrate.

In Rush *vs.* Newman, 58 Fed. 158 (C. C. A. 8th Cir.), the fourth paragraph of the syllabus is as follows:—

> "In actions at law in the Federal Courts **the sufficiency of the pleadings to support the judgment** must be determined by the laws regulating the practice and pleadings in the State Courts, as determined by the State decisions."

In Sawin *vs.* Kenny, 93 U. S. 289, this Court held that it was bound by the provisions of the Arkansas Code regulating the joinder of parties.

In Bond *vs.* Dustin, 112 U. S. 604, it was held that the Federal Courts were bound under Section 914 to follow a statute of Illinois providing that where a verdict was rendered on several counts it might not be set aside if any of the counts were good.

In Glenn *vs.* Sumner, 132 U. S. 152, 156, Mr. Justice Gray said:—

"The sufficiency and scope of the pleadings, and the form and effect of verdicts, in actions at law, are matters in which the Circuit Courts of the United States are governed by the practice of the Courts of the State in which they are held."

See also:—
Albany Co. *vs.* Lundberg, 121 U. S. 451, 454;
Arkansas Co. *vs.* Belden Co., 127 U. S. 379, 387.

In Bryson *vs.* Gallo, 180 Fed. 70, the Circuit Court of Appeals for the Sixth Circuit held itself bound to follow the provisions of the Ohio Code almost precisely similar to those Sections 6130 and 6148 of the Code or Arkansas, requiring a "liberal construction" of the pleadings, "with a view to substantial justice between the parties," and providing that the trial Court "must, **at every stage of an action,** disregard any error or defect in the proceedings which does not affect the substantial rights of the adverse party."

Section 6148 is not a provision relating merely to appellate procedure. It applies to **"every stage of the action"** and required the trial Judge to overrule the demurrer based on misjoinder. It further required him, when the case came to trial, to overrule the single motion by defendants to strike out all the plaintiffs. not only because such a motion was manifestly not the proper way to raise the question, but also since defendants called to his attention no substantial rights on their part, thereby adversely affected, which would properly influence him, in his discretion, to take such action.

Finally these provisions required him during the trial to treat the case as one action and to submit the case for a single verdict, **unless defendants could again show some substantial reason why their rights would be prejudiced thereby.**

This they did not even attempt to do. On the contrary they in effect gave their unqualified approval to submission of the case to the jury **to find but a single verdict.**

What happened is shown by the Record at the close of the Judge's charge to the jury (Rec., 3219):—

> "When you have agreed upon your verdict, if for the defendant, you will simply sign the verdict that the jury find the issues in this case in favor of the defendant, and against the plaintiffs; find all of the issues in this case in favor of the defendants and signed by your foreman.
>
> "If for the plaintiffs, you would sign the verdict that the jury find all of the issues in this case against the defendants and in favor of the plaintiffs, and assess the actual damages of the plaintiffs at the sum of—there you would write in the number of dollars. The verdict will be blank. You would insert the number of dollars, and the foreman would sign that. Another form will be given you, because the Court has instructed you that you must consider at least in determining who are parties to the conspiracy and therefore determining who the defendants are that are liable, if any of them are, and who are not liable, if any of them are not, therefore a verdict will be furnished you with a space that the jury finds for the defendants, or find against the plaintiffs and in favor of the defendants, with a space in which the defendants names can be written, and that will be signed by the foreman, and would entitle such defdndants whose names were returned in there by you to a dismissal of the action, and just below that, 'We find the issues in this action against the defendants,' naming them, 'and in favor of the plaintiffs, and assess plaintiffs damages at the sum of dollars.' **So there will be three forms of verdict submitted to you.** In the one you have to write nothing except the name of a foreman on a verdict for the defendants. **In the other, the general verdict for the plaintiffs, in which you would simply insert the amounts, if your verdict is in favor of all the plaintiffs and against all of the defendants,** and in the third it will be necessary to insert the names of the de-

fendants in whose favor you determine the issues, and the names of the defendants against whom you determine the issues, together with the amount of the verdict signed by you.

"I think that covers it, gentlemen?"

The Court's final remark, above quoted, was obviously addressed to counsel.

If counsel for defendant thought that the protection of their "substantial rights" required separate verdicts, this was obviously the time for them to say so.

They said nothing on the subject.

Counsel for plaintiff suggested a correction or addition to the charge relative to the measure of damages with which the Court at once complied (Rec., 3220; these additional instructions were given immediately after the defendants took their exceptions and should have followed at the top of page 3221).

Counsel for defendants took two exceptions, **both involving solely the liability of the National Union, and neither in any way alluding to the form of the verdict** (see *supra*, page 246, hereof).

If, as the Courts have frequently held, counsel may not wait to object to the answer of a witness until such answer proves unfavorable, how much less standing did they have to wait to object to this verdict, until the verdict proved unfavorable to them, when they knew full well from the judge's charge that, if for the plaintiffs, it could not be other than in a lump sum.

Judge Adams' comment in St. Louis etc. Ry. Co. *vs.* Duke, 192 Fed. 306, 309, is directly applicable here:

> "This practice of permitting a question to be answered without objection, and, if perchance the answer be unfavorable, to then object to both question and answer, **is not proper or fair practice. It permits a party to speculate on the chances of a favorable answer before committing himself against the question."**

To sustain the position of plaintiffs in error would permit them to speculate on the chance of a favorable verdict before committing themselves against what they knew must be its form.

We have elsewhere cited rather fully the decisions of this Court requiring timely requests for instructions to the trial Court and specific exceptions to portions of the charge objected to (see pp. 252–260 hereof). We will not here burden the Court with a reiteration of these citations.

In this connection it is interesting to note the recent Arkansas case of St. Louis etc. Ry. *vs.* Rodgers, 118 Ark. 263, 268 where the Court held that, irrespective of the question of "substantial prejudice," a defendant who had failed to request separate verdicts prior to the submission of the case to the jury was not in a position to ask the Court to require the jury to apportion the verdict after it had been rendered.

That the trial Court in no way abused its discretion in connection with the matters above discussed, further appears from a consideration of the peculiar facts of this case.

The petition alleged that the properties of the several companies of which the plaintiffs were appointed Receiver were all closely interrelated and depended one on the other. The Court in which the trial was held and which had as a matter of fact ordered the suit to be brought, had appointed plaintiff's predecessor Receiver of all these companies **by a single decree.**

Referring to the interrelations of the companies and their properties, Mr. Bache testified (2325):—

> "A. The lines of these properties did not concern us in putting in our mines because we put our mines down regardless of the lines between the leases and the properties we owned. **We held them as one concern and it was all under lease, one property with the other, and the mines went through the lines whether we held them in fee or one company by another company or under lease."**

In conducting the Receivership, the same Court, as its Record shows, had treated the properties **as a unit.**

To provide funds for the conduct of the receivership the Court had authorized and there had been issued Receiver's Certificates to the amount of $35,000 which were made a first lien **on all the property of all the companies indiscriminately.**

The companies were treated by all concerned, Court, receivers, stockholders and creditors, as one concern.

Furthermore, the conspiracy by defendants was directed, not against the property of each of these companies separately or against all properties of all people indiscriminately, **but was directed against these particular interests AS A UNIT.**

It is further contended by plaintiffs-in-error that certain of these companies had no legal interest in the suit.

As we shall presently show, they all owned jointly the good will and business of the group and for this reason alone were justified in bringing a joint suit for its destruction.

It is apparently conceded that the Prairie Creek Coal Mining Company, the Mammoth Vein Coal Company, the Mammoth Vein Coal Mining Company and the Coronado Coal Company owned physical property which was destroyed.

Specific damage to physical property suffered by each of the other five companies was as follows:

The Denman Coal Company owned a great part of the machinery, both in the Coronado Mine (2135, 2137) and at the Rock Island tipple at Mammoth Vein No 1 (2248, 2249, 2251), which mine and tipple were destroyed by the Union in the course of or immediately after the battle.

While the leases of this machinery by the Denman Coal Company to the Mammoth Vein Coal Company contained provisions requiring the lessees to make good the losses, the lessees were left in no position to do so. The lessor, Denman Coal Company, therefore lost its machinery.

The Hartford Coal Company owned the Dallas Mine,

which was damaged to the extent of $2950, as testified by Mr. Denman (Rec., 1973–1976). Its business was also seriously injured by the forfeiture of the adjoining lease in conjunction with which it had been planned to operate the Hartford Company's land (1978).

The Sebastian County Coal Company was lessee of the Boone lease, which was one of the leases forfeited. It had subleased the coal at 5 cents a ton additional royalty to the Coronado Coal Company (2105–2123), and lost this lease.

The Mammoth Vein Royalty Company also owned a tract adjoining one of the forfeited leases, which itself was leased to the Mammoth Vein Coal Company, and which the forfeiture of the lease rendered incapable of profitable operation. It also had an agreement with the Mammoth Vein Coal Company and the Mammoth Vein Coal Mining Company by which it was to receive 2 cents per ton on all the coal hauled through its property from the tracts covered by the forfeited leases. The acts of plaintiffs in error rendered this agreement of no value whatever and caused its total loss to the Mammoth Vein Royalty Company.

The Bache-Denman Coal Company was the parent company of the syndicate. It had made an agreement, secured by a bond, with the Rock Island Railroad to ship a certain amount of coal annually over that road, which by reason of the destruction of the Rock Island Tipple, it was unable to fulfil. The railroad had made claim under the bond and agreement for several thousand dollars (2310–2311).

While the bond itself was not admitted in connection with this damage, the agreement was subsequently admitted for another purpose (2490) and the damage to the Bache-Denman Company is thus apparent. The bond should properly have been admitted as evidence of direct damage to the Bache-Denman Company, and it having been rejected on the objection of plaintiffs in error, they are in no position to rely on the absence of proof contained in it.

Missouri K. & T. Ry. Co. *vs.* Elliott *et al.*, 102 Fed. 96, 103–104.

The mere fact that the Bache-Denman Coal Company had thus obligated itself, relying solely on its subsidiaries to fulfil its obligation, is a good illustration of the interrelation of these operations, and of our position that they were all a unit.

The contention by plaintiffs in error that these particular companies had totally independent claims, which they could have prosecuted separately, totally overlooks not only the facts relative to their organization but the nature of the right given under the Sherman Act.

As we have heretofore pointed out, the Sherman Act specifically allows a recovery not merely for tangible property destroyed. "Any person who shall be injured in his **business** or property * * * may sue, etc."

The use of the word "business" in addition to "property" makes conclusive what would otherwise be clear. that the remedy was intended to cover injuries to good will as well as to physical property.

Cleveland, etc., R. Co. *vs.* Barchus, 154 U. S. 439;
San Diego Co. *vs.* National City, 174 U. S. 739;
San Diego *vs.* Jasper, 189 U. S. 439;
Knoxville *vs.* Water Co., 212 U. S. 1.

It has been specifically held that good will is properly an element of damage under the Sherman Act. Such constituted the major portion of the damages sustained in Loewe & Lawlor, 235 U. S. 522.

It is not at all necessary to support this judgment to hold either that a stockholder may bring suit to collect damages suffered by his company or even that parties having independent interests injured by the same conspiracy may bring a joint suit or consolidate their actions.

The business, the good will, of all these nine companies was owned and enjoyed by them jointly and was attacked by the United Mine Workers as a joint operation.

It would have done no good for the United Mine Workers to blow up and destroy the mines of one of these companies without destroying all of them. The

conspiracy was directed against the property of the companies jointly, and the statement of claim so avers.

No attempt was ever made to operate the Coronado open shop. The Union struck and subsequently destroyed the Coronado **simply and solely because Bache owned it as well as the Prairie Creek and Mammoth Vein.**

The Mammoth Vein Mines Nos. 1 and 6, and the Dallas Mine, were not being operated open shop when they were destroyed by defendants. **They were destroyed solely because they were a part of the joint business against which the unlawful conspiracy was directed.**

In reading the extracts from the Journal it is noticeable that the operations are always referred to as conducted by the Bache-Denman Coal Company (*supra*, pp. 111, 112, 119, 120, 133) the parent or holding company, and no attention at all was paid to which company happened to hold legal title to which particular mine.

They had leases, agreements and arrangements between one another which would have made it totally impossible to determine exactly which company suffered exactly what proportion of the total loss (see, for instance, Rec., 2218, 2139, 2135, 2263, 2203, 2219).

The water supply for the Prairie Creek Coal Mining Company, Mammoth Vein Coal Company and Mammoth Vein Coal Mining Company was all furnished by the Prairie Creek Company.

In what proportion did the destruction of this water supply affect the three companies?

What part, for instance, of the business and good will of the group in Kansas City or in Duluth belonged to the Prairie Creek Coal Mining Company and what part to Coronado?

The coal from all the mines was distributed among all the companies as occasion required. The good will of all really belonged to the owners of the property, to the group of operations.

Here is the reason for the belated attempt by the Union to compel the jury to split up the verdict. Not

that any honest and substantial right of theirs was affected by the consolidation or by the single verdict, but simply in the hope that, by reason of the infinite complication which would necessarily result, the jury of honest farmers would become so hopelessly confused that the defendants, who had no substantial defense to the case, and against whom the verdict had already been rendered when they first asked for its apportionment, would get off scot-free.

It was to prevent just this sort of injustice, which so frequently happened in Lord Coke's day, that the Arkansas Code, "with a view to substantial justice between the parties," gave to the trial Judge discretion, where a number of causes of action were of a like nature or relative to the same question, to allow them to be consolidated either before or after the suit was brought and to "proceed to trial as one action" (117 Ark. 71).

Certainly each of the nine companies, entirely apart from any physical damage to its property, was entitled to at least nominal damages on account of the destruction of the **business** of the syndicate of which it was a part and in whose good will it directly participated.

The obvious way to treat the whole matter, with a view to substantial justice between the parties, both plaintiffs and defendants, was to treat the whole as one action.

By paying this judgment the defendants will get a full release from all the nine companies.

See Kansas City So. Ry. *vs.* Mixon, 107 Ark. 48, 57.

The only right they have lost is the right to perpetuate an injustice by delaying the trial and confusing the issue.

The distribution of the amount recovered will be for the Court which appointed the receivers of all nine by a single decree. So far none of the nine, nor any of their stockholders,—two or three in number,—or their creditors, have offered any objection and it does not lie in the mouth of these plaintiffs in error to do so.

EIGHTH.—**There was no Error in Requiring the Representatives of the Association to Produce the Books and Papers called for.**

The sole ground on which plaintiffs in error seek to distinguish this case from Hale *vs.* Henckel, 201 U. S. 43 is that this defendant is not a corporation.

That this distinction is without a difference is so clearly brought out in the opinion of this Court in Wilson *vs.* U. S., 221 U. S. 361, that elaboration by us is unnecessary.

The distinction is not between corporate books and other books, but between papers which the party holds in his own right and those which he holds merely as custodian subject to the demand of the real owner.

See also Wheeler *vs.* U. S., 226 U. S. 478.
Grant *vs.* U. S., 227 U. S. 74.
Johnson *vs.* U. S. 228 U., S. 457.

The papers ordered to be produced were solely those belonging to the Association and the order was directed to the officers solely in their representative capacities, as custodians thereof.

The Sherman Act is not, as plaintiffs in error contend, a penal statute.

Atlanta *vs.* Foundry Co., 127 Fed. 27, 28 (affirmed 203 U. S. 390).

Other Errors Assigned but not Argued.

We assume that the alleged errors suggested by the assignment of errors but not covered by the points presented to this Court have been abandoned by plaintiffs in error.

NINTH.—**The Judgment Should be Affirmed.**

It is respectfully submitted that the judgment of the Circuit Court of Appeals was correct and should be affirmed.

HENRY S. DRINKER, JR.,
JAMES B. McDONOUGH,
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APPENDIX A.

Extracts from Conference Committee Reports and Debates in Congress on the Labor Provisions of the Clayton Act.

Section 6 of the Clayton Act provides as follows:—

"SECTION 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying on the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

Extract from Report No. 627 of the Conference Committee appointed by the Senate and House to Report a Conference Draft of the Clayton Act, the portions of the two Reports with reference to Section 6 being identical.

"VII.

"FRATERNAL, LABOR, AND OTHER ORGANIZATIONS.

"The object of Section 7 (subsequently changed to Section 9) is to make clear certain questions about which doubt has arisen as to whether or not fraternal, labor, consumers, agricultural, or horticultural organizations, orders, or associations organized for mutual help not having capital stock or conducted for profit, come within the scope and purview of the Sherman antitrust law in such way

as to warrant the courts under interpretations heretofore given to that law to enter a decree for the dissolution of such organizations, orders, or associations upon a proper showing, as may be done in regard to industrial corporations and combinations which have been found to be guilty of violation of its provisions.

* * * * * *

"It was contended before your committee by Mr. Gompers, president of the American Federation of Labor, that under the interpretations of the Sherman Law as construed by the courts, the labor organizations as they exist today, might, under certain conditions, be deemed and held illegal combinations in restraint of trade and be dissolved by a decree of the court under section 4 of the act of July 2, 1890, and that the American Federation of Labor and all organizations affiliated with it exist and operate today at the sufferance of the administration in power. Mr. Gompers, among other things in his address before the committee, said:

"'Gentlemen, under the interpretation placed upon the Sherman anti-trust law by the Courts, it is within the province and within the power of any administration at any time to begin proceedings to dissolve any organization of labor in the United States and to take charge of and receive whatever funds any worker or organization may have wanted to contribute or felt that it is his duty to contribute to the organization.

"'MR. WEBB:—Are there any suits pending in the Courts now looking to this end, Mr. Gompers?

"'MR. GOMPERS:—There are no suits now pending, but an organization of workingmen, the window-glass workers, was dissolved by order of the Court under the provisions of the Sherman anti-trust law, charged with conspiracy as an illegal

combination in restraint of trade. And while that organization was dissolved by action of the Court, yet it created no furor, for this reasoning: I have no desire to reflect upon the men who are in charge of that organization as its officers and representatives, but it was, in my judgment, supine cowardness for them not to resist an attempt of the dissolution of their associated effort as a voluntary organization of men to protect the only thing they possessed—the power to labor.

"'MR. WEBB:—Have you any case where a labor organization has been dissolved simply because they themselves united in asking or fixing a certain wage and went no further in uniting with the manufacturers?

"'MR. GOMPERS:—I can not tell you, sir, about that. But that is the very essence of the life of the organization. What I want to convey is this, that there are probably, of these 30,000 or more local associations of workingmen, what we call local unions of working men and working women, probably more than two-thirds of whom have agreements with employers. As a matter of fact, I think that every observer and every humanitarian who knows greeted with the greatest satisfaction the creation of the protocol in the sweated industries of New York City and vicinity which abolished sweat-shops and long hours of labor, and the burdensome, miserable toil prevailing, and established the combination of employers and of workmen and workwomen by which certain standards are to be enforced, and no employer can become a member of the manufacturers' association in that trade unless he is willing to undersign an agreement by which the conditions prevailing in the protocol will be inaugurated by him. Yet, under the provisions of the Sherman anti-trust law that association of the manufacturers has been sued, I think, for something like $250,000, because it is a conspiracy in restraint of trade.

"'What I mean to say is this: I am perfectly satisfied in my own mind that the Attorney General of this administration, the Attorney General of the United States under the present administration, is not going to dissolve or make any attempt to dissolve the organizations of the working people of this country. **I firmly believe that if there should be any of them, any individual or an aggregation of individuals, guilty of any crime, that the present administration would proceed against them just as readily, and perhaps more so, as any other;** I am speaking of the procedure **against the organizations themselves** and the dissolution of them. But who can tell whether this administration is going to continue very long, or whether the same policy is going to be pursued; that is, the policy of permitting these associations to exist without interference or attempts to isolate them? Who can tell? What may come; what may not the future hold in store for us working people who are engaged in an effort for the protection of men and women who toil to make life better worth living? We do not want to exist as a matter of sufferance, subject to the whims or to the chances or to the vindictiveness of any administration or of an administration officer. Our existence is justified not only by our history, but our existence is legally the best concept of what constitutes law. It is an outrage; it is an outrage of not only the conscience; it is not only an outrage upon justice; it is an outrage upon our language to attempt to place in the same category a combination of men engaged in the speculation and the control of the products of labor and the products of the soil on the one hand and the associations of men and women who own nothing but themselves and undertake to control nothing but themselves and their power to work.

"'Mr. Floyd:—I want to see if I understand your position. If I understand your position under

the existing status of the law as determined by the Federal courts, if the Attorney General should proceed to dissolve any of your labor organizations they could be dissolved. Is that your proposition?

"'MR. GOMPERS:—Yes, sir.

"'MR. FLOYD:—And that your existence, therefore, depends upon the sufferance of the administration which happens to be in power for the time being?

"'MR. GOMPERS:—Yes, sir.

"'MR. FLOYD:—**What you desire is for us to give you a legal status under the law?**

"'MR. GOMPERS:—**Yes, sir.**

"'MR. FLOYD:—So you can carry on this cooperative work on behalf of the laborers of the country and of the different organizations without being under the ban of the existing law?

"'MR. GOMPERS:—Yes, sir.'

"In the light of previous decisions of the courts and in view of a possible interpretation of the law which would empower the courts to order the dissolution of such organizations and associations, your committee feels that all doubt should be removed as to the legality of the existence and operations of these organizations and associations, and that the law should not be construed in such a way as to authorize their dissolution by the courts under the antitrust laws or to forbid the individual members of such associations from carrying out the legitimate and lawful objects of their associations. This will be accomplished by the provisions of section 7 of this bill, **which recognize as legal the existence** and operations of fraternal, labor, consumers, agricultural, or horticultural organizations, orders, or associations organized for purposes of mutual help, and not having capital stock or conducted for profit, and forbids the danger and possibility of the dissolution of such organizations, orders, or associations by a decree of the courts as unlawful com-

binations in restraint of trade or commerce under the provisions of the antitrust laws. It also guarantees to individual members of such organizations, orders, or associations, the right to pursue without molestation or legal restraint the legitimate objects of such association. This section should be construed in connection with sections 15 to 22, inclusive, which regulate the issuance of injunctions and provide for jury trials in certain cases of contempts in Federal Courts. The sections relating to injunctions and contempts constitute for labor a complete bill of rights in equitable proceedings in the United States courts."

For years Mr. Gompers and his colleagues had been reiterating, until both they and their constituents had probably come to believe it, that the courts were discriminating against the laboring class, holding them criminally and civilly responsible for doing things which would not have been held unlawful if done by other than laboring men in the absence of a labor dispute, and that in view of such attitude, lawful and peaceful labor unions exercising merely their proper functions in a lawful manner were in danger of dissolution merely because their purpose was to raise wages and better working conditions, which would indirectly result in increasing prices.

Accordingly, the following planks were inserted in the Democratic Platforms of 1908 and 1912, in pursuance of which the labor provisions of the Clayton Act were passed:—

"Questions of judicial practice have arisen especially in connection with industrial disputes. We believe that the parties to all judicial proceedings should be treated with rigid impartiality and that injunctions should not issue in any cases in which injunctions would not issue if no industrial dispute were involved.

* * * * * * *

"The expanding organization of industry makes it essential that there be no abridgement of the right of wage earners and producers to organize for the protection of wages and the improvement of labor conditions, to the end that such labor organizations shall not be regarded as illegal combinations in restraint of trade."

In redeeming this pledge the Democratic Congress which passed the Clayton Act had no thought of licensing labor unions unreasonably to restrain interstate commerce, or to destroy property with impunity but merely to allay the fears and silence the statements of those who contended that their class was discriminated against by the courts and to declare that the mere existence of a labor union lawfully exercising its legitimate functions does not amount to an **unreasonable** restraint of interstate commerce.

As stated in the reports of the judiciary committees of the Senate and the House submitting the bill as amended:—

"It is not proposed by the bill or amendments to alter, amend or change in any respect the original Sherman Anti-Trust Act of July 1, 1890. The purpose is only to supplement that Act and the other Anti-Trust Acts referred to in Section 1 of the bill."

"The bill does not interfere with the Sherman Anti-Trust Act at all; it leaves the law of conspiracy untouched and is not open to criticism on any constitutional ground."

There was no intention of doing what the Labor Unions had for years been striving to have done—to provide that the Anti-Trust Act shall not **apply to** Labor Unions. Amendments so providing were expressly rejected by Congress.

"MR. THOMAS:—Mr. Chairman, I ask to have that amendment read for information.

"THE CHAIRMAN:—If there be no objection, the amendment will be again reported.

The Clerk read as follows:

Strike out the first paragraph of Section 7 as amended and insert in lieu thereof the following:

"The provisions of the anti-trust laws shall not apply to agricultural, labor, consumers, fraternal, or horticultural organizations, orders or associations.'

"The question being taken, the Chairman announced that the noes appeared to have it.

"MR. THOMAS:—Let us have a division.

The committee divided; and there were—ayes 70, noes 79.

"MR. THOMAS:—Mr. Chairman, I ask for tellers.

"Tellers were ordered, and the Chairman appointed Mr. Thomas and Mr. Webb.

"The committee again divided; and the tellers reported ayes 69, noes 105.

"Accordingly, the amendment was rejected."

Vol. 51, Cong. Rec. part 10, page 9569.

Speaking on behalf of the amendment thus defeated, Mr. Thomas of Kentucky, who offered it, said:—

"MR. THOMAS:—Mr. Chairman, to say the least of this amendment it is as ambiguous as the prophecy of a Roman oracle. As a matter of fact, it means nothing. It is a mere declaration of that which is now the law. To make the statement that this law shall not be construed so to hold certain organizations to be illegal is simply to state that these organizations *per se* shall not be declared to be illegal by this law. You might insert a paragraph declaring that under this law the Baptist Church or the Masonic order should not be construed to be an illegal combination in restraint of trade. They are not illegal, even in the absence of that declaration. Agricultural organizations and Labor organizations under this law are not illegal combinations, even without that declara-

tion, and notwithstanding that declaration the very moment that an agricultural association or a laborers' organization violates any provision of this law it is applicable to such association and they can and will be punished under the law. Any man knows that. For instance, should these associations have in their by-laws or charter articles which allowed them to form conspiracies, to form monopolies in restraint of trade, does any man contend that the very moment they attempted to carry out such declaration of the organization they would not fall under this law? To be sure they would. If you are going to exempt these organizations, exempt them. If you are not going to exempt them, say so. The amendment which I shall offer after this amendment has been voted on simply declares that the provisions of the anti-trust laws shall not apply to any of these organizations. There you have a clean cut exemption. (id. p. 9544).

The purpose and effect of the Clayton Act, as applied to Labor Unions is made clear by the following discussion in Congress by Mr. Webb, in charge of the Bill in the House, and by other members of the House and Senate.

"MR. WEBB:—Mr. Chairman. The Amendment which is under consideration is, in the opinion of the Committee, in keeping with the declaration of the Democratic platform, to the effect that labor organizations and farmer's organizations organized for mutual self help shall not be considered or construed to be illegal combinations or conspiracies in restraint of trade under the Anti-Trust laws.

* * * * * * *

"Personally, I have never had any idea that the existence and operation of labor organizations, of farmers unions, or fraternal orders were ever intended to come within the provisions of the Anti-Trust law.

However, some labor leaders have contended for many years that labor organizations have their existence as a matter of sufferance and at the whim of the attorney general, and if suit should be brought, if they were not dissolved entirely, much trouble would be given them. * * * Therefore we say that we have embodied in this section as set forth in the first part of Section 7 and expressed in the latter part of this amendment which I now offer what is generally understood to be the law and should be the law of the United States with reference to labor organizations as well as fraternal and farmers' organizations. Applause." (id. p. 9540).

"MR. WEBB:—We wanted to make it plain that no labor organization or farmer's organization organized for mutual help without profit should be construed to be a combination in restraint of trade or a conspiracy under the anti-trust laws. Now I will say frankly to my friend that **we never intended to make any organization, regardless of what they might do, exempt in every respect from the law.** I would not vote for any amendment that does do that. Applause.

"MR. MURDOCK:—**If the labor organization goes beyond the province of mutual help, then it is subject to the Sherman Anti-Trust Law?**

"MR. WEBB:—**If it violates the law, it is, of course. It is an organization subject to the law,** and I ask if my friend from Kansas would vote to exempt it from all laws? (id. p. 9567).

"MR. TOWNER:—**Any association of the classes mentioned, or any member who violates the anti-trust laws will be liable to their penalties the same as any other association or person.** It is merely provided that the organization or legitimate operation of such association shall not be held to be within the prohibitions of the statute." (id. p. 9547).

MR. GRAHAM:—So far as the Webb amendment now proposed is concerned, it seems to me that it

effectuates what the committee proposed in the original section 7, only in broader and clearer language. It provides that a certain class of organizations and their members shall not be held liable as conspiracies in restraint of trade or monopolies under the language of the antitrust law. As I understand it, it does not exempt them if they are guilty of aggressive, malicious, and criminal acts. If these are committed, they are as much liable as any other class or set of citizens, and that is as it should be, for in matters of crime there ought to be no classification of the citizens of our country." (id. p. 9549).

"MR. JONES:—I desire to get the views of the Senator from Kansas as to how far he thinks this provision of the proposed law goes. Does it go any further than recognizing the legality of these organizations as organizations, or does it permit these organizations after they are organized, to then go on and do things in restraint of trade and exempt them from prosecution for such acts?"

"MR. THOMPSON:—I think it exempts them simply as lawful organizations; but, of course, if they do anything unlawful or use any unlawful means, they are subject to prosecution under the antitrust law and under the general laws on the subject without regard to the antitrust law.

"MR. JONES:—That is what I wanted to get at; that is about my idea with reference to how far this provision goes.

"MR. THOMPSON:—The provision only protects such organizations in the performance of lawful acts, as I understand.

"MR. JONES:—It prevents the court from holding as a conspiracy in violation of the Sherman law **simply because of their** organization?" (Vol. 51 part 14 page 13847).

"MR. THOMPSON:—That is the intention, as I understand it." (*id.* p. 13848).

"MR. BORAH:—The only effect of it, in my judgment, will be to remove the possibility of an attack upon the organization as such which in my judgment at this time could not be successfully made. In other words, it removes a fear, possibly well grounded, but in my judgment unfounded, in the law as it now exists. This section gives these organizations a status and permits them to lawfully carry out their legitimate purposes." (id. p. 13918)

"MR. BORAH:—I have no doubt at all of the proposition that the organized engineers, although they might be the only engineers who could run the trains properly, could quit work. They could assign a reason or not assign a reason, just as they pleased. If they went a step further, however, and if the road was prepared to operate and they interfered with its operation through the instrumentalities which the road might choose to employ, incompetent engineers or otherwise, they would be within the provisions of the Sherman law. In one instance—to wit—in quitting work—they are exercising a right; in the other instance, where they interfere with others from operating a train, they are not exercising a right, but doing a wrong, and the consequences which flow from doing a thing we have a right to do and the thing we have not a right to do may be physically the same, but the legal liability is different." (id. p. 13921).

"MR. JONES:—Nor does this proposed section 7 make acts done by some organizations legal which if done by other organizations would be illegal. It does not permit these organizations to commit acts in undue restraint of trade which would be prohibited to other organizations. While some few might argue in favor of such an exemption, there is no considerable number of our citizens, laborers, farmers, or otherwise, who would urge that they be permitted to restrain trade and others be prohibited from doing

it. One of the cardinal principles of farmers' and laborers' organizations is "special privileges to none and equal rights to all." **A law that would allow some persons or organizations to commit certain acts and make it unlawful for other persons and organizations to do the same thing would be more injurious in the long run to the organizations and persons given this special privilege than beneficial, and nothing would sooner undermine the very foundations of our Government than such a course.**

* * * * * * *

"In my judgment this provision does not give to labor a single right that it does not now possess. This provision simply says, in effect, that the existence of labor organizations is not unlawful; that their operations for mutual help are legal; that the lawful efforts of their members to carry out their legitimate objects is not forbidden; and that such organizations are not *per se* in restraint of trade, nor their members as such conspirators in restraint of trade. All this, in my judgment is lawful now. I do not believe that any decision of any court can be found where it has been held that a labor organization independent and apart from acts done by its members, is simply by virtue of its formation and existence a combination in violation of the Sherman law. No court of last resort has held that laborers, in the absence of contract cannot quit work either singly or in a body, and for any reason whatever, or for no reason, and regardless of the consequences to private or public interests. The right to do so is an inherent right and its exercise is superior to the rights of the individual or the public, and the courts cannot inquire into the consequences of the exercise of such right with a view to preventing it.

* * * * * * *

"This provision gives no more than this—Why pass it? What is its purpose? It is to set at rest in an authoritative way by legislative enactment any doubt that may exist as to those rights of labor or rather to set at rest this one question, to wit, whether a labor organization is *per se* a combination in violation of the Sherman law, and therefore liable to dissolution irrespective of what it or its members may do. Some able lawyers have held that it is so liable to dissolution, and labor thinks they may be right, and this provision sets at rest that doubt. Surely no one who understands this will object to such legislation, and those who have protested against this section will most surely approve its passage when they understand it. In other words, this provision is no more and no less than a legislative declaration of existing law as enunciated by the courts." (id. pp. 14012, 14013.)

"MR. HUGHES:—There is no one here on either side of the Chamber who desires to give the farmers' or laborers' organizations or any other organizations the right to use violence, threats, intimidations, coercion, or force of any kind. I am willing to write that into this section now. It seems to me that we ought not to waste any more time on it." (id. p. 14015.)

"MR. JONES:—I suggested a while ago, especially with reference to labor, that there is a difference of opinion with reference to what a combination or an association of labor is. Some prominent lawyers say the mere fact of the existence of an organization of labor is of itself a violation of the Sherman law. I do not think there is anything to that, and the only purpose of this legislation is to set at rest in a legislative way that particular question. It is a legislative construction that these farmers' organizations may exist without violating the Sherman law; it simply makes certain what some able men have doubted; that is all." (id. p. 14016.)

"MR. JONES:—Those who oppose this legislation and urge us not to pass it must believe that it exempts labor organizations and their members from prosecutions for acts done beyond what they have a legal right to do for the purpose of unreasonably restraining trade or commerce. It does not do this, and such acts can be prosecuted just the same after the passage of this provision as before, either, in my judgment, under the Sherman law or under other laws of a local or a national character affecting these acts. It may be—and this is the point I want to call the attention of the chairman of the committee to—that for such acts an organization could now be dissolved, while after the passage of this provision it might not be; but even if this is so, it could be restrained from doing the unlawful acts, and then there could be no objection to its continuance as an organization. In other words, under the Sherman law an organization that is found guilty of restraining trade can be dissolved; and I take it that if a labor organization should be held now to have restrained trade, the court could dissolve such organization.

"Now I want to ask the Senator from Texas if this section is adopted and then a labor organization should be held to have violated the Sherman law by reason of intimidation or coercion or acts of that character which are beyond the legitimate purposes of the organization and its lawful scope whether this provision would not exempt it from dissolution and whether the courts would not probably restrain those acts and then let the organization continue in existence?

"MR. CULBERSON:—I think, Mr. President, that would depend somewhat upon whether or not the amendment proposed by the committee inserting the word "lawfully" is adopted.

"MR. JONES:—I mean if the amendment is adopted.

"MR. CULBERSON:—It would depend on whether the amendment proposed by the Judiciary Committee inserting the word "lawfully" is adopted. I think in that case, where the organization exists and is pursuing the legitimate objects of the organization in a lawful manner, it could not be dissolved, or rather, declared unlawful or restrained by an injunction of a Federal court.

"MR. JONES:—The point I am suggesting is this: Suppose that they do something unlawful. Suppose they do unlawful acts, then the court could restrain them from doing those acts.

"MR. CULBERSON:—I think so, so far as this bill is concerned.

"MR. JONES:—But would it not have to stop there, or could it go on and dissolve the organization?

"MR. CULBERSON:—Not in my judgment. The court would not be authorized to dissolve the organization.

"MR. JONES:—That is my point, and that is the suggestion that I am making. That, in my judgment, is the only substantial change made by this provision in existing conditions. Under conditions now existing the court could dissolve the organization, while if this provision is passed and a labor organization should commit some unlawful act the court could stop those unlawful acts. There it must stop and let the organization continue its existence. I think that is quite a substantial right and quite a substantial provision, but one that will not in any way interfere with interstate trade or commerce.

"MR. WEST:—Mr. President, in what way would the court stop such an organization—by fine or imprisonment?

"MR. JONES:—I suppose so, or by injunction or something of that sort." (id. p. 14017).

"MR. CUMMINS:—Yes, I think the passage of the

section will remove this danger. It will make it clear that a labor organization—assuming now that the words are construed to mean a union of wage workers having for its object the increase of wages, the betterment of conditions, and the lessening of hours of work—is not in and of itself a restraint of trade. I think that must be accepted as the effect of this section; but the moment you pass beyond that and enter any activity of an officer of the association or a member of the association I think the section does nothing at all. I think the word "lawfully," which has been reported by the committee and, I understand, is now before the Senate for rejection or adoption, limits the activities or acts or doings of any such association to just such as are now authorized by the law." (Id. p. 14018).

"MR. THOMAS:—The effect of this section is to neutralize and render inoperative those decisions of the class to which I have referred, which declare or tend to declare that these organizations are *in themselves* organizations in restraint of trade, and therefore subject to dissolution.

"The fact of existence, their status, in other words, is fixed by this section, and in so far as their objects are legitimate and in the pursuit of them, legitimate measures are used there can be no conflict with the antitrust laws. The same thing may be said of corporations, great and small. But beyond that, Mr. President, this section does not go; the thing itself is legalized. Whether it comes under the provisions of the antitrust laws depends upon its future conduct, which may or may not be offensive to those statutes.

"The union can do nothing, in other words, that the corporation cannot do under this statute, if it proposes to steer clear of the antitrust laws. The corporation can do anything that the labor union may do and keep out of the clutches of the antitrust law. Its purpose, in other words, Mr. President, is

to create an equality of status, and beyond that the general laws of the country are operative."

* * * * * * *

"Therefore with reference to this branch of the subject, I may summarize the situation by the statement that section 7 makes, so far as the anti-trust laws are concerned, all labor and agricultural associations lawful and endows them with power, if they did not have it before, of carrying out in a lawful manner the legitimate purposes and objects of their organization, but they may nevertheless so act as to violate the law just as corporations or individuals may violate it by conduct which brings them within its prohibitions. No combination really becomes a combination in restraint of trade until it does something, until it takes some active step, until its plans are effected or sought to be effected by overt acts. A man may contemplate a crime and the law is powerless to lay its hand upon him until by some act he does or attempts the thing forbidden.

"So it is the act or attempted act, in its last analysis which makes a corporation or any other association of individuals subject to the provisions and inhibitions of the anti-trust law, and it would be a mistake if this bill were enacted into a statute under the mistaken impression that it does something more; otherwise a large class of our fellow citizens might well say that they asked us for bread and received a stone."

* * * * * * *

"Mr. President, if it be true that under the provisions of this bill labor organizations may indulge with impunity in the boycott, then it is equally true that manufacturers may combine with labor organizations in boycotting their competitor's goods, and because of such combinations they will also

become exempt from its operations, for it is an elementary legal proposition permitting of no exception that if the principal is not guilty the accessory cannot be guilty. The result would be that we would have a statute prohibiting corporations from any act in restraint of trade unless those actions were in combination with employees, in which event they would be absolutely exempt from its provisions, and the Sherman Act would cease to be an effective force in interstate commerce. The mere statement of such a proposition is its own refutation." (Id. pp. 14021–3).

APPENDIX B.

Text of the Sherman Anti-Trust Act.

An Act to protect trade and commerce against unlawful restraints and monopolies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce along the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such territory and another, or between any such territory or territories and any state or states or the District of Columbia, or with foreign nations, or between the District of Columbia and any state or states or foreign

nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties (1667) complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section 4 of this Act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in Section 1 of this Act, and being in the course of transportation from one state to another, or to a foreign country, shall be forfeited

to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. That the word "person" or "persons" wherever used in this act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, or the laws of any of the territories, the laws of any state, or the laws of any foreign country.

APPENDIX C.

Federal and State Statutes in Effect in 1914, Authorizing the Formation of Unincorporated Labor Unions and Recognizing them as Existing under Such Laws.

Federal Statutes.

Section 6 of the Act of Congress of October 15, 1914 (38 Stat. at large 730, 731, the Clayton Act), is as follows:

> "Nothing contained in the anti-trust laws shall be construed to forbid the **existence**. and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."

Another Act of Congress, passed four years before the Sherman Act, contains an equally explicit recognition,—the National Trades Unions Act of June 29, 1886 (24 Stat. at Large, 86), quoted in the body of the Brief.

Chapter 389 of the Acts of 1911–1912 (37 Stats. at Large 550), Section 1, provides for the admission to the mails as second class matter of "periodical publications issued by or under the auspices of ***trades unions.*"

The Act of August 1st, 1914 (38 Stat. at Large, 609, 652), in making the appropriation to the Department of Justice for the enforcement of the Anti-Trust laws provided that "no part of this money shall be spent in the prosecution of *any organization* or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours, or bettering the conditions of labor, or for any act done in furtherance thereof, not in itself unlawful."

State Laws.

Arkansas, Oklahoma and Texas.

The three States over which District Branch No. 21 of the United Mine Workers has jurisdiction and in which this Branch carries on the activities of the National Organization, are Arkansas, Oklahoma and Texas.

The laws of these three States of Arkansas, Oklahoma and Texas clearly recognize unincorporated trade unions as "existing under" the laws thereof.

The Act of May 6th, 1905, Acts page 745, Kirby & Castle Digest, Sec. 5473, etc., of the State of Arkansas is known as the Trades Union Label Act. Section 5475 of this Act is as follows:—

> "Section 5475. Whenever any association or union of workingmen has heretofore adopted or used, or shall hereafter adopt or use a label for the purpose of designating, making known or distinguishing any goods, wares, merchandise or other product of labor, as having been made, manufactured, produced, prepared, packed or put on sale by a member or members of such association or union, it shall be unlawful to counterfeit or imitate such label or to use, sell, offer for sale or in any way utter or circulate any counterfeit or imitation of any such label."

The subsequent sections provide for the fine or imprisonment of any person counterfeiting or imitating such label.

Section 5478 provides as follows:—

> "5478. **Every such association or union** adopting or using a label as aforesaid, **may proceed by suit to enjoin** the unauthorized use, display, and sale of any counterfeit or imitation thereof, and all courts of competent jurisdiction shall grant

injunctions to restrain such manufacture, use, display, or sale, and may award **the complainant** in any such suit for damages resulting from such manufacture, use, sale or display as may be by said court deemed just and reasonable and shall require the defendants to pay to such association or union all profits derived from such wrongful manufacture, use, display or sale; and such court shall also order that all such labels, counterfeits or imitations in the possession or under the control of any defendant in such cause shall be delivered to an officer of the court, or to the complainant, to be destroyed."

We beg to call the Court's attention to the fact that this Act does not specify how the suit to be brought by the trade union is to be entitled.

Presumably the suit is to be brought in the name of the Association, or under the provision of the Arkansas code which we have heretofore quoted in connection with Point Three,—suit being brought by the representative officers on behalf of the association.

The above recognition by the Arkansas Statutes of Labor Unions as existing thereunder, is not in any way dependent on whether the particular union has registered a union label with the Secretary of State of Arkansas. The recognition by the State law does not depend on registry. Without registry the Act makes it illegal for anyone to counterfeit or use without authority a label which has been adopted by a trades union.

Nor does the recognition of the existence of the Union depend even on the adoption of a union label. The **Union must first be existing** under the laws of Arkansas before it adopts or registers a label. **The Act recognizes such present existence.** Whether or not this particular Union has or has not adopted a label or registered it under the Act is immaterial.

By the Act it is given, **as an Association,** a right, benefit and privilege not possessed by it at common law.

The other States over which District No. 21 has jurisdiction are Oklahoma and Texas.

In OKLAHOMA there is a Trade Union Label Act practically identical with that in Arkansas.

Revised Laws, Okl. (1910) Vol. II, Secs. 8211–8219.

Section 3707 of the Revised Laws of 1910, Vol. I, provides as follows:—

> "It shall be the duty of the President or chief executive officer of **every labor organization** of which he is an officer, immediately to communicate the fact (of any strike or lockout) to said Board (the State Board of Arbitration and Conciliation) with such information as he may possess touching the differences or controversy and the number of employees involved."

Section 3763 makes it a misdemeanor to cause or compel any person to enter into an agreement not to join or be a member of any **labor organization** as a condition of securing or continuing employment.

Section 3764 provides that no combination or contract in contemplation or furtherance of a trade dispute shall be punishable as a conspiracy where the act shall not be indictable if done by one person, but specifically provides "that nothing in this article shall be construed to authorize force or violence."

In TEXAS there is a similar express statutory provision giving an unincorporated trade union the right to prevent by suit in Court, the unauthorized use of a trade label adopted by the Union.

Acts 1895, page 108, I Vernon's Sayles' Dig. (1914) Arts. 705–706.

The Texas Statutes further recognize unincorporated labor unions both as existing under and as authorized thereby, in a distinct and very significant chapter in the Statutes of that State, as follows (III. Vernon's Sayles' Dig., page 3438):—

"TITLE 77.

"CHAPTER TWO.

"Labor Organizations.

"Article 5244. **Right to organize.** It shall be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service, in their respective pursuits and employments, (Acts, 1899, page 262, Sec. 1.).

"Article 5245. **Other rights and privileges.** It shall not be held unlawful for any member or members of such trades union or other organization or association, or any other person, to induce or attempt to induce by peaceable and lawful means, any person to accept any particular employment, or quit or relinquish any particular employment in which such person may then be engaged, or to enter any pursuit, or refuse to enter any pursuit, or quit or relinquish any pursuit in which such person may then be engaged; provided, that such member or members shall not have the right to invade or trespass upon the premises of another without the consent of the owner thereof. (Id., Sec. 2.)

"Article 5246. **Not to apply to what organizations.** The foregoing articles shall not be held to apply to any combination or combinations, association or associations of capital, or capital and persons, natural or artificial, formed for the purpose of limiting the production or consumption of labor's products, or for any other purpose in restraint of trade: provided, that nothing herein contained shall be held to interfere with the terms and conditions of private contract with regard to the time of service, or other stipulations, between employers and employees; provided, further, that nothing herein

contained shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies. (Id., Sec. 3.)."

The Texas statutes further provide for the appointment to the State Arbitration Board of two members by the "central body" of **"any labor organization"** to which the aggrieved employees belong, or by the organization itself if it is not represented by delegates to a central body.

The submission to arbitration is to be signed by the **"labor organization** representing the employees," and it is provided that during the pendency of the arbitration it shall not be lawful for the "organization representing the employees" to order strikes or boycotts against such employer.

Acts 1895, page 85, Sections 1, 3 & 8, I. Vernon's Sayles' Dig. Arts. 71, 74 and 78.

By article 425 of the Revised Criminal Statutes of 1911 it is made a misdemeanor without authority to use or wear the badge, label or button or other emblem of **"any labor organization."**

Other States in which the United Mine Workers has Active District Branches.

The other states in which the Record shows that the United Mine Workers has a District Branch and actively carries on its work are Alabama (District No. 20, P. 395), Colorado (District No. 15, p. 371), Illinois (District No. 12, p. 395), Indiana (District No. 11, p. 413), Iowa (District No. 13, p. 379), Kansas (District No. 14, p. 395), Kentucky (District No. 23, pp. 395, 412), Michigan (District No. 24, p. 411–412), Missouri (District No. 25, p. 477), Montana (District No. 27, p. 400), Ohio (District No. 6, p. 389), Pennsylvania (Districts Nos. 1, 2, 5, 7 and 9, p. 412, 384), Virginia p. 541), Washington (District No. 10, p. 399), West Virginia

(District No. 17 and 29, p. 367), and Wyoming (District No. 22, p. 399, 576), and British Columbia (District No. 18, p. 395).

Each of these States has one or more laws recognizing the existence of unincorporated labor unions and giving them a status and rights under its laws.

In ALABAMA, in addition to a Trade Union Label Act similar to that in Arkansas (Code of 1907, vol. III, Sections 7322, 7323), the Act of April 7, 1911 (General Acts, page 320), provides for the submission of grievances between employer and employee to a board of arbitrators, and provides that "when the employees concerned are members, in good standing of a labor organization, one arbitrator may be appointed by such organization and one by the employer." (Section 6).

COLORADO, also has a similar Trade Union Label Act, (Revised Statutes of 1908, Section 6844, 2 Mills Annotated Statutes (1912), page 3188), the Unions having secured the passage of such an Act in 43 of the States.

By Section 3903 of the Revised Statutes of Colorado of 1908 (I Mills Annotated Statutes (1912), page 244), the Bureau of Labor Statistics is required to present biennial reports to the Legislature, covering, *inter alia*:—

> "Thirteenth.—A description of the different kinds of **labor organizations in existence** in the State, and what they accomplish in favor of the class for which they were organized."

Section 3924 (I Mills Annotated Statutes (1912), page 215), specifically permits two or more persons to combine and to advise, by peaceable means, others to combine relative to the compensation, working conditions and welfare of labor as against the employer, provided no force or intimidation be employed.

The Act of March 27th, 1911, Laws, page 8, 2 Mills Annotated Statutes (1912), page 3187, provides that it

shall be a misdemeanor for an employer to demand, as a condition of employment, that the employee shall sever any present connection with, or shall refrain from joining **any lawful organization or society,** or that the employer "under any pretense whatever," "prohibit, limit, or restrain such employee from exercising his social, financial, fraternal or business rights in connection with or through **any lawful organization or society,** during his employment."

In ILLINOIS the Trade Union Label Act is found in the Act of May 8th, 1891, Laws, page 202, as amended by Act June 13th, 1895, Laws, page 319, 6 Jones & Addington's Illinois Stat., Annotated, pages 6331 to 6339.

The Act of August 2nd, 1895, Laws 1895, page 5, as amended by Act of May 15th, 1903, Laws, page 84, 3 Jones & Addington's Illinois Stat. Annotated, page 2856, provides for the appointment by the Governor of three persons to compose a State Board of Arbitration, one of whom "shall be an employee and shall be selected from **some labor organization."**

The Act of April 12th, 1899, Laws, page 75, 3 Jones & Addington's Illinois Stat. Annotated, page 2859, makes it the duty of the "president or chief executive of **every labor organization,** in case of a strike or lockout, actual or threatened, involving the members of the organization of which he is an officer," to communicate the facts to the Board.

In INDIANA (where the principal office of the United Mine Workers is located), in addition to the Trade Union Label Act (3 Burn's Annotated Stat., Rev. of 1908, Sections 10453–10463), Section 2683, I Burn's Annotated Statues, Rev. of 1908, makes it punishable as a misdemeanor for any individual or corporation to prevent or coerce any employee "from forming, joining and belonging to **any lawful labor organization."**

Section 7963, 3 Burn's Annotated Stat., Rev. of 1908, also provides that the arbitration agreement provided for by the previous sections, may be signed on behalf of the employees by the officers or committeemen of **any** "**labor union** or workingmen's society" to which they may belong.

By section 9348 the Bureau of Labor Statistics is instructed to present a biennial report covering, *inter alia*, "**trades unions and other labor organizations,** and their effects on labor and capital."

The Indiana Statues specifically recognize the existence in that State of the United Mine Workers, providing by Section I of Chapter 276 of the Acts of 1911, Acts, page 658, that the coal miners "individually or **through their organizations,**" may recommend a miner for the Examining Board to pass on the qualifications of coal miners.

IOWA, like all the other States in which the United Mine Workers has District Branches, has a Trade Union Label Act, giving an unincorporated Labor Union the right to register its union label and to protect its use by Court proceedings. (Iowa Code of 1897, Sections 5049–5051).

Chapter 292 of the Iowa Acts of 1913, Supplement Code of Iowa 1913, Section 2477n also recognizes the existence of unincorporated labor unions by providing (Section 1) that the "organization" representing employees engaged in a labor dispute may appoint one member of the board of arbitration thereby provided.

In KANSAS, in addition to the Trade Union Label Act (Genl. Stat., 1915, Sections 11654 to 11659), Section 10423 of the General Statutes of 1915, makes it the duty of the Commissioner of Labor to report annually to the Legislature statistical details relating "to **trade unions** and **other labor organizations** and their effect on labor and capital."

In KENTUCKY, the Trade Union Label Act of April 16,

1890, is found in Carroll's Statutes, Sections 4749 to 4755. By section 34 of these Statutes, it is made the duty of the State Commissioner of Labor to put himself in communication with different organizations in the State including **" labor societies."**

MICHIGAN'S Trade Union Label Act is found in the Compiled Laws of 1897, Sections 11681 to 11686, as amended by Chap. 279 of the Acts of 1913. (Howell's Statutes, Sec. 7555–7561.)

Sections 7451 to 7456, 7434 to 7440, and 7447 to 7450, of the Compiled Laws of 1897 provide for the incorporation of Labor Unions. Section 7457 provides that "all societies, **unions** and associations of tradesmen or laborers **actually existing** and conducting their affairs under a constitution or articles of association," may incorporate by filing the constitution or articles verified by oath.

Section 11382 provides that the State Anti-Trust Law **"shall not apply** * * * to the services of laborers or artisans who are formed into societies or organizations for the benefit and protection of their members."

MISSOURI has a similar Trade Union Label Act (Rev. Stat. 1909, Sections 11789–11796; acts of 1913, pp. 763–765).

Section 7802 of the Revised Statues of 1909 provides for the appointment by the Governor of a State Board of Mediation and Arbitration consisting of three persons, one of whom "shall be an employee holding membership in some bona fide **trade** or **labor union."**

MONTANA'S Trade Union Label Act is contained in Sections 8452 to 8457 of the Penal Code of 1907.

The Revised Code of 1907 of Montana requires that all state printing shall bear a union label (Sections 254–255).

This State also has a provision for a State Board of Arbitration and Conciliation to be appointed by the

Governor, one of the three members of which "must be a laborer, or selected from **some labor organization.**"

In the Montana Act forbidding monopolies and contracts in restraint of trade there is a provision exempting "any arrangement, agreement or combination between laborers made with the object of lessening the number of hours of labor or increasing wages." (Section 8289 of Code of 1907; Chap. 97, Section 2 of Acts of 1909).

The Trade Union Label Act of OHIO is Sections 6219–6227, and Sections 13102, 13103, 13153–13155 of the General Code of 1910, and also page 420 of the Acts of 1911.

Section 12943 of the Code of 1910 provides for the fine or imprisonment of any one coercing or attempting to coerce employees "from forming, joining or belonging to a **lawful labor organization.**"

Section 13163 also provides a fine or imprisonment for any one who "not being entitled so to do under the rules and regulations thereof, wilfully wears the badge or button of * * * a **labor organization,** * * * or uses or wears it to obtain aid or assistance thereby."

The Trade Union Label Act of PENNSYLVANIA is the Act of May 2nd, 1901, P. L. 114.

By the Act of May 8, 1869 P. L. 1260, it is made lawful for "any and all classes of mechanics, journeymen, tradesmen and laborers to form **societies** and **associations** for their mutual aid, benefit and protection and peaceably to meet, discuss and establish all necessary by-laws, rules and regulations to carry out the same."

By the Act of June 16th, 1891, P. L. 300, it is made lawful for any laborers either individually or as the member of any **club, society or organization** to refuse to work for any one who pays insufficient wages or treats his employees badly or where such continued labor is "contrary to the rules, regulations or by-laws of any **club, society or organization** to which he or she or they belong without

subjecting any person or persons so refusing to work to prosecution or indictment for conspiracy, under the criminal laws of this Commonwealth," provided the constitution, by-laws, rules and regulations conform to the laws of Pennsylvania and

> "Provided that nothing herein contained shall prevent the prosecution and punishment, under existing laws of any person or persons who shall by the use of force, threat or menace of harm to person or property, hinder persons who desire to labor for their employers from so doing, or other persons from being employed as laborers."

By the Act of March 27th, 1903, P. L. 106, it is made a misdemeanor for any one not entitled to use the insignia or button "of any association, society or **trades union"** to wear or use the same to obtain aid or assistance.

In addition to its Trade Union Label Act (Code of 1904, Section 1906d; Code of 1919, Secs. 1455-1463) the laws of VIRGINIA make it a misdemeanor to make unauthorized use of "any insignia or button of any association, society or **trades-union."**

WASHINGTON'S Trade Union Label Act is found in Sections 9492–9500 of the Codes and Statutes of 1910.

Sections 2676 and 2677 of this Code also make it a misdemeanor to "give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any duly constituted 'representative of a **labor organization**'" or for such a representative to ask or receive the same.

Section 6553 makes it the duty of the Commissioner of Labor to make a biennial report to the Legislature covering statistical details relating, *inter alia*, "to **trade unions** and other **labor organizations** and their effect upon labor and capital."

In addition to the standard Trade Union Label Act (Sec. 3578–3585 of Hoggs Code), Section 487 of the code

of WEST VIRGINIA makes it unlawful for any one by threats or intimidation to prevent any person from working in or about a mine but provides that "this provision shall not be so construed as to prevent any two or more persons from associating together under the name of Knights of Labor, or any other name they may desire, for any lawful purpose, or for using moral suasion or lawful argument to induce any one not to work in or about any mine."

The WYOMING Trade Union Label Act is found in Sections 3439–3444 of the Compiled Statutes of 1910.

The Constitution of Wyoming itself recognizes the existence of labor unions, requiring the Legislature to establish courts of arbitration to hear and determine all differences and controversies between **organizations and associations of laborers** and their employers.

The answer of defendants alleges that they carry on their activities in CANADA (247, 261). On page 395 of the Record it appears that District Branch No. 18 is located in BRITISH COLUMBIA.

In CANADA there are statutes both of the Dominion, and of the Province of BRITISH COLUMBIA, entitled "Trades Union Act" (Chap. 125 of Rev. Stat. 1906 and Chap. 228 of Rev. Stat. British Columbia 1911.)

Section 2 of the Act first cited is as follows:—

> "In this Act, unless the context otherwise requires, 'trades union' means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, but for this Act, have been deemed to be an unlawful combination by reason of some one or more of its purposes being in restraint of trade."

Section 33 is as follows:—

"The purposes of any trade union shall not by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise, or so as to render void any agreement or trust." See also §497 of Ch. 146 to the same effect.

Section No. 1 of Chap. 228 of the British Columbia statutes of 1911 provides as follows:—

1. "No trade-union nor any combination of workmen or employees in British Columbia, nor the trustees of any such union or combination in their representative capacity, shall be liable in damages for any wrongful act of commission or omission in connection with any strike, lock-out, or trade or labor dispute, unless the members of such union or combination, or its council, committee, or other governing body, acting within the authority or jurisdiction given such council, committee, or other governing body by the rules, regulations, or directions of such union or combination, or the resolutions or directions of its members resident in the locality or a majority thereof, shall have authorized or shall have been a concurring party in such wrongful act."

Additional State Statutes.

The foregoing covers the principal Acts of the 18 States in which the United Mine Workers have active District Branches, recognizing the existence of unincorporated Labor Unions under the several laws and giving rights and protection to such organizations, all of which laws were in effect in 1914 when the plaintiffs' mines were destroyed and when the present action was originally begun.

The following is a list of the principal Statutes of

States in which the United Mine Workers of America had no active branch, giving recognition and protection to unincorporated Labor Unions.

Arizona.—Trade Union Label Act—Penal Code §§314–318.

California.—Trade Union Label Act—Political Code of 1906, §§3200–3201; Penal Code 1906, §§349a–351, (Amended by Ch. 181 Acts of 1911). Coercion against joining or being member of labor organization a misdemeanor. Code of 1906, Section 679.

Unauthorized use of insignia of labor union unlawful—Ch. 331 and 392 of Acts of 1909.

Connecticut.—Trade Union Label Act—Genl. Stat. of 1902, §§4907–4912 (Am. Ch. 151 Acts of 1907).

Coercion against joining or being member of labor union unlawful—§1297, Genl. Stat. 1902.

Protection of insignia of labor union—Ch. 113, Acts of 1907.

Delaware.—Trade Union Label Act—Ch. 266 of 1899.

Florida.—Trade Union Label Act—§§3169–3172, Genl. Statutes of 1906.

Georgia.—Trade Union Label Act.—§§1989–1992, Code of 1910.

Idaho.—Trade Union Label Act.—§§1449–1455, Rev. Code of 1908.

Labor organization to appoint member of Arbitration board—§1431 Rev. Code of 1909.

Coercion against joining or being member of labor organization unlawful—Section 1456, Rev. Code of 1909.

Louisiana.—Trade Union Label Act—No. 49 Acts of 1898. Section 1, p. 136 of Act No. 50 of 1890 provides that any trades unions as now established in this state may become incorporated.

Maine.—Trade Union Label Act—Ch. 40, §§30–36, Revised Statutes 1903.

Ch. 207 §1 of Acts of 1909 permits special insurance rates for members of labor unions taken out through their secretaries.

Arbitrator chosen from labor organization, Ch. 229, §2, Acts of 1909.

Duty of Commissioner of Labor to collect statistics relative to trade unions. Ch. 65 §2 of Acts of 1911.

Maryland.—Trade Union Label Act—Art. 27, §§43–48, Pub. Genl. Laws 1903.

Massachusetts.—Trade Union Label Act—§§7–14 of Ch. 72, Rev. Laws of 1902.

Coercion to leave union unlawful—§19, Ch. 514, Acts of 1909.

Trades Unions not subject to certain provisions of insurance law, §30, Ch. 514, Acts of 1909. Registration and prohibition of improper use of insignia of trade union,—§§31–32, Ch. 514, Acts of 1909.

Fines levied by unincorporated union according to its rules and regulations not to be held coercive. Ch. 431 of Acts of 1909.

Minnesota.—Trade Union Label Act—§§5072–5076, Rev. Laws, 1905.

Arbitration Board to contain one member recommended by a labor union—§1828, Rev. Laws, 1905.

Forgery of labor union card a crime, §5053. Coercion to leave labor union unlawful, §5097.

Nebraska.—Trade Union Label Act—§§6944–6951 Code of 1911.

One member of Arbitration Board to be chosen from a labor organization—§§3633 and 3638. Rev. Stat., 1913.

Crime for agent of labor organization to embezzle funds §8659.

Nevada.—Trades Union Label Act—Rev. L., 1912, §§4635–4637, 6691–94.

One arbitrator to be chosen from and ordering labor organization, §1930, 1934, Rev. L., 1912. Unlawful to stipulate against membership in labor organization, §6792.

Unlawful to offer bribe to representative of labor organization or for such representative to receive one, §§6794–6795.

New Hampshire.—Trades Union Label Act—Ch. 42, Acts of 1895. Embezzlement of funds of unincorporated trades union unlawful, Ch. 273, Pub. St. 1891, Ch. 1 Acts of 1905.

One Arbitrator selected from labor organization—Ch. 198, §3 of Acts of 1911.

Coercion to leave union unlawful, Ch. 208, Acts of 1913.

New Jersey.—Trades Union Label Act—pp. 1802, 5643–5648, Comp. Stat. of 1910.

Special insurance rates permitted to members of labor organizations—§116 of Ch. 191, Comp. Stat. 1910.

Coercion to leave union unlawful, §129, p. 3051, Comp. Stat. 1910.

Advertising required in paper devoted to the interest of organized labor, §23, p. 3766, Comp. Stat. 1910.

Bribery of representative of organized labor a misdemeanor, Ch. 94, §1, Acts of 1911.

New York.—Trades Union Label Act, Ch. 31, §§15–16 of Consol. L. of 1909.

Trades Unions may unite to form a corporation to acquire a hall—Ch. 3, §7, Cons. L. 1909.

Arbitrator to be appointed by labor organization—§146 of Ch. 31 Consol. L. 1909.

Bribery of representative of labor organization criminal, Ch. 40, §380, Cons. L. 1909.

Coercion to leave union prohibited, Ch. 40, §531, Cons. L. 1909.

Use of false credentials of labor organization a misdemeanor, Ch. 40, §1278, Cons. L. 1909.

Oregon.—Trades Union Label Act, §§1841–1848, Am. St. and Code 1902.

Blacklist to prevent joining labor organization prohibited, §2181, Laws of 1910.

Unauthorized use of insignia of labor organization prohibited, Ch. 73, Acts of 1911.

Porto Rico.—Not unlawful to form trade or labor unions to better conditions—Rev. St. 1911, §1653.

Coercion to leave union prohibited—§5919, Rev. Stat. 1911.

Rhode Island.—Trades Union Label Act—Ch. 196, Genl. Laws of 1909.

South Dakota.—Trades Union Label Act—§§3190–3195, Pol. Code 1903.

Utah.—Trades Union Label Act—§§2720–2723, 4482–4483, Comp. L. 1907.

Member of State Board of Arbitration from labor organizations, §1324, Comp. L. 1907.

Vermont.—Trades Union Label Act—Pub. St. 1906, §4962–4967, No. 121 Acts of 1908.

One member of State Arbitration Board from a labor organization—Acts of 1912, No. 190, §1.

Wisconsin.—Trades Union Label Act—1747a, Comp. Stat. 1911. State Anti-Trust Act not to be construed to affect labor unions, §1747L, Comp. St. 1911.

TABLE SHOWING CONNECTION WITH THE UNION, PARTICIPATION IN THE STRIKE, AND SUBSEQUENT TREATMENT BY THE UNION OF THE [illegible] AND REPRESENTATIVES

		Sentenced for contempt.	2488		
		Sentenced for conspiracy on plea of guilty.	2477		
John Manick.	President Local Union No. 1565. (2379, 2380).	Member of Committee and active participant in Riot of April 6th.	1156, 1791 1184, 1161 1795, 1839	Exonerated from dues.	2379
				Union furnished bail.	2437
				Delegate to Convention.	2443, 2445
		Took part in numerous assaults between April 6 and July 17.	1431, 1780 1511, 1543 1564, 1702 1785, 1783		
		Speech prior to Battle.	1886	Union paid his fine.	2484 2471
		Took part in Battle.	1533, 1869		
		Sentenced for contempt.	2489		
		Sentenced for conspiracy on his plea of guilty.	2408, 2418 2422, 2480		
James Crossley.	Member of Union. (2406, 2408, 2472).	Wrote letter threatening the life of Judge Youmans.	1820, 1821 2408, 2418	Appointed Financial Secretary of Local 2110 shortly after release.	2448
		Pled guilty.	2483	Placed on Union pension list five days after release from jail.	2467 2472
				Aid from District 21.	2471
Oscar Layton.	Member of Local No. 1565 (1744); also Local No. 2769 (2382).	Received and distributed arms and ammunition for the Battle.	1609, 1615 1651, 1686 1689, 1694	Approved as delegate to District Convention, 1915.	2442, 2443
				Union committeeman.	2452
		Rescued prisoner from U. S. Marshal.	2422	Union paid his fine.	2484 2471
		Sentenced for conspiracy on plea of guilty.	2418, 2422 2482–2483		
Dave Brauch.	Member of Local Union No. 2770 (2382).	Rescued prisoner from U. S. Marshal.	2422, 1834 1776, 1879	Fine paid by Union (but later he repaid it).	2484 2471
		Pled guilty and sentenced.	2408, 2418 2422		
Will Reed.	Member of Local Union No. 2770 (2382, 2384).	Intimidated Argo.	1187	Fine paid by Union.	2484 2471
		Took part in Battle.	2420		
		Rescued prisoner from U. S. Marshal.	2422, 1834 1879		
		Pled guilty and sentenced.	2408, 2418 2422		

		Present at Log Cabin murders.	1540, 1541 1544, 1545 1552, 1663 1664		
		Defendant ir Looper suit.	236Fed.336		
		Speech at Hartford before the Battle.	1909		
		Pled guilty and sentenced in criminal proceedings.	2479		
Sandy Robinson.	Member of Local 2110 (2381).	Took part in Riot of April 6.	1840, 1741	Exonerated by Local 2110 from dues during strike.	2381
		Participated in many assaults and intimidations between April 6th and July 17th.	1322, 1432 1565, 1670 1430, 1257 1431, 1702 1780	Continued member in good standing.	1744
		Recognized as one of armed Unionists surrounding mines night before Battle.	1776–1778	Union paid his fine.	2484 2471
		Helped rescue prisoner from U. S. Marshal.	1778		
		Sentenced for contempt	2488		
		Indicted for conspiracy and sentenced on plea of guilty.	2408, 2418 2478		
Clint Burris.	Member of Committees in Local 1565. (2379, 1744, 2379, 2446, 2467, 1786).	Took prominent part in Riot of April 6th.	1190, 1199 1206, 1208 1218, 1795 1839, 1213 1353, 1219 1428	Delegate to Convention in August, 1914.	2379
				Exonerated from dues April-June, 1914.	2378
		Participated in many assaults and intimidations between April 6 and July 17.	1210, 1353 1322, 1504 1538, 1543 1670, 1702 1422, 1871 1430, 1520 1785	Put on committees after release from jail.	
				Union paid fine.	2471 2484
		Took part in the Battle.	2420		

	Secretary of Local Union No. 1526 at Hartford. (Rec. 1724, 2450.)	Hartford.	1719, 1751	his Local (1526) as soon as he came out of jail.	1743
		Speech prior to Riot.	1721	Received as accredited delegate to District 21 Convention in 1916.	2445
		Speech prior to Battle.	1882, 1911 1895, 1900	Union spent funds to secure his pardon.	2440–2442
		Field leader at Battle.	1589, 1697 1698, 1779	Collections for his benefit.	2450–2452
		Admission of participation.	1590		
		Phoned to Stewart.	1592		
		Distributed arms and ammunition.	1727, 1732 1752		
		Visited merchants to close stores.	1750		
		Plea of guilty and sentence.	2482		
Fred Holt.	Secretary-Treasurer District 21.	Bought and shipped high-power rifles and ammunition to the Unionists.	1598, 1601 1614–1615 1653, 1691 1693 1835–7	Praised in United Mine Workers Journal.	2394 2397
				Treated as a martyr by President White in 1916 Report.	2426
		Sentenced on plea of guilty.	2482	Union paid his $1000 fine.	2484 2471
Jim Slankard.	Prominent Union member and Committeeman (2383) Constable of Hartford. (1210–1212).	Member of Local Union Committee at Riot of April 6th.	1155, 1184–6	Never disciplined by the Union.	480–482 2744–2745
		Speech during Riot.	1198 1427, 1721	Fine paid by Union.	2484 2471
		Union leader at Riot.	1218, 1800		
		Pled guilty and sentenced.	2479		
		Participated in numerous intimidations between April 6th and July 17th.	1255, 1322 1519–1520		
		Shot up Frogtown to bring on the Battle.	1460–1461		

TABLE SHOWING CONNECTION WITH THE UNION, PARTICIPATION IN THE STRIKE, AND SUBSEQUENT TREATMENT BY THE UNION OF THE ELEVEN "MEMBERS AND REPRESENTATIVES" WHO PLED GUILTY TO THE CRIMINAL CHARGES.

NAME.	POSITION IN THE UNION.	PARTICIPATION IN PRAIRIE CREEK STRIKE.	RECORD PAGE	SUBSEQUENT ACTION BY THE UNION.	RECORD PAGE
Pete Stewart.	President of District 21.	Speech at Midland on May 25th. Brief, p. 80.	1312–3 1494, 1496 1711, 1457	Appointed by President White to vacancy in District 21 Executive Board October, 1915.	1644, 2433
		Damn the injunction. Brief, p. 81.	1499 1500	Received as accredited delegate to National Convention of 1916	2425
		Countersigned checks for guns.	1695 1837	and to District Conventions of 1915 and 1916.	2426
		Speech at Hartford befor the Battle.	1725	Fine paid by the Union.	2484 2471
		Phone call to Hartford meeting.	1884 1895		
		Sentenced for contempt.	2488		
		Sentenced to $1000 fine on his own plea of guilty.	2481		

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In the Supreme Court of the United States.

OCTOBER TERM, 1920. NO. 239.

United Mine Workers of America, et al, *Plaintiffs in Error*,

vs.

Coronado Coal Company, et al, *Defendants in Error*.

IN ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

The important questions involved in the present writ of error are presented by a record of almost 3500 pages and are discussed by plaintiffs in error in a most elaborate brief.

Certain of the errors specified are highly technical, which, from the point of view of plaintiffs in error, they would doubtless prefer to have the Court consider on as narrow a basis as possible, without regard to the relation of the point in question to the rest of the case.

One of the principal errors relied on is in connection with a portion of the charge of the trial Judge dealing with the facts of the case, and drawing what plaintiffs in error contend are unwarranted inferences therefrom.

In a record as voluminous as the present no one point can properly be viewed entirely by itself, apart from the atmosphere of the whole case, particularly where it involves merely a question of evidence, proof, or procedure; nor can the trial Judge's charge be properly understood without a knowledge of the record on which it is based.

Accordingly, after a brief reference to the principal legal question involved, we have made a summary, as condensed as possible from a record of this size, of the case which the plaintiffs made in the trial court, stating the plan and legal theory on which we asked our recovery and the evidence offered to substantiate it.

In the succeeding pages where the discussion refers to the proceedings in the trial Court, the parties are referred to as they stood therein,—plaintiffs and defendants. Figures in parentheses not otherwise designated refer to printed pages of the present Record.

The Principal Question Involved.

The crucial question here presented is whether a labor union is liable, under the Sherman Anti-Trust Act, for damages inflicted by its duly constituted officers and representatives, in the furtherance of its collective aims and purposes, in the course of a combination and conspiracy in restraint of interstate commerce.

The verdict of the jury on which the present judgment is based is conclusive of the following facts:

That the United Mine Workers of America, acting through its District and Local Organizations which under its constitution had been created by it to carry out its associate objects, by threats, intimidation, force and violence, murdered, injured or drove away all plaintiffs' employees from its mines and then deliberately burned its tipples, dynamited its slopes, destroyed its machinery,

flooded its mines and ruined or carried off its movable property, including in the destruction cars of coal loaded on railroad cars and billed to points in other states; that all this was done with the intent and for the purpose of preventing the plaintiff from shipping its coal mined under open shop conditions, to other States, in competition with the coal there mined under closed shop contracts; that as a result the plaintiffs' properties were ruined, they were left insolvent and their leases forfeited; that both during and after the destruction the United Mine Workers, through its Official Journal and by the action of its accredited officers and its delegates in convention assembled, applauded and approved of what had been done.

The verdict, $200,000, was less than one-third of the amount of damages proved and not disputed, and less than half the amount which the United Mine Workers Journal boasted had been suffered by plaintiffs.

Aside from technical questions of evidence, proof and procedure, the sole defence by the Union is that, since it is not incorporated, it is beyond the reach of the law.

Although it has a membership of upwards of 400,000 men, bound together by a constitution to carry out its objects, which objects constitute the sole business and livelihood of its members; although it has an organization as highly centralized as it would be possible to create, with innumerable District and Local Branches chartered and created by the Main Organization to carry on its activities and do its bidding and subject to discipline or annulment by it for refusal so to do; although it has vast associate funds, mounting into the millions, delegated to its officers to be used in carrying on its business, and which, as in the present case, may be employed solely by unlawful means and with an unlawful purpose to crush those who stand in its way; nevertheless, it is claimed, these same vast funds cannot be made to pay for the damage which they have caused, solely because the Union has not chosen to incorporate.

There could be, it is submitted, no better illustration than that presented by this Record, of the wisdom of Congress in refusing to exempt labor organizations from the provisions of the Sherman Act, and in inserting the provisions in Section 8 making liable thereunder not only corporations organized under Federal or State laws, but also **associations authorized by or existing thereunder,** to the end that no person or group of persons who violated its provisions could claim immunity from liability thereunder.

The foregoing question has been determined in favor of the plaintiffs, without dissent, by the seven Federal Judges who have heard this case—Circuit Judges Sanborn, Carland, Adams, and Hook, and District Judges Youmans, Elliott and Trieber.

It is discussed more at length hereafter under our First, Second and Third Points.

Parties to the Record.

The plaintiffs in the Court below were the receivers of the Bache–Denman Coal Company and its eight subsidiaries, all closely interrelated both in corporate organization and in the physical location of their properties. These properties up to 1914 were operated as a unit, under one set of officers, in the Prairie Creek Valley in Sebastian County, Arkansas. In July, 1914, plaintiff's predecessor was appointed by the District Court for the Western District of Arkansas, receiver of all nine companies, by a single decree.

The defendants in the Court below were the United Mine Workers of America, its officers as such, District 21 of the United Mine Workers of America, its officers as such, 27 Local Branches in District 21, and 65 individuals, including both members of the Union and other persons, not members, who acted in conjunction with the Union in carrying out the conspiracy which resulted in the destruction of plaintiff's property.

It has never been attempted in these proceedings to secure a personal judgment against individual members of the Union not named as defendants.

Legal History of the Case.

The original complaint was filed in the District Court for the Western District of Arkansas, in September, 1914, about six weeks after the destruction of the properties. (Record page 5.)

To this complaint and to the amended complaint filed in July, 1915, defendants demurred on three grounds, first that the complaint did not set out facts which constituted a restraint of interstate commerce, second, for improper joinder of plaintiffs and causes of action, and third that defendants as unincorporated associations were not subject to suit.

Judge Youmans sustained the demurrer on the sole ground that the Court had no jurisdiction in that the acts complained of were not interference with interstate commerce or a violation of the Sherman Act (Record page 159), overruling the ground of demurrer based on the exemption by the Union from liability to suit.

A writ of error was then taken by the defendants to the Circuit Court of Appeals and the Unions also filed motions to dismiss on the ground that the writ should have been to this Court. The case was argued before Circuit Judges Sanborn, Carland and Adams, who sustained their jurisdiction and reversed the judgment of the Court below, deciding both that a violation of the Anti-Trust Act was presented, and that the Union was liable to suit under that Act.

Dowd *vs.* United Mine Workers, 235 Fed. 1.

Defendants thereupon applied for writs of *certiorari* and prohibition to this Court which were dismissed (242 U. S. 625, 653). (Record, page 179).

The Third Amended Complaint was filed February 27, 1917, and demurrers by all the defendants having been overruled, answers were filed denying all the material averments of the complaint. (Record pages 238–269).

On the issue thus formed the case was tried at Fort Smith in October and November, 1917, before his Honor Judge Elliott and a jury and resulted in a verdict of $200,000 which was trebled by the Court and to which

was added a counsel fee of $25,000 and interest to the amount of $120,400 (from July, 1914, to November 22, 1917).

On writ of error by defendants the case was heard before Judges Sanborn, Hook and Trieber, who reversed on the question of the addition of interest to the judgment but sustained the main judgment, Judge Hook dissenting, however, on an assignment relating to the charge of the trial Court.

From the judgment thus entered the present writ of error has been taken by the Union.

Analysis of the Complaint.

Record pp. 179–201, 224–228, 232–238.

The essential averments of the third amended complaint on which the case was tried are as follows:—

By a single degree a receiver was appointed of all the nine coal companies named in the caption, Finley and Hilliard having been later substituted in succession.

Of these nine companies, five were operating companies which for years had been engaged in mining coal in Sebastian County, Arkansas, and shipping it in interstate commerce, employing about 870 men and mining a product of an annual value in excess of $465,000, of which 75% was sold and shipped to customers outside the State of Arkansas in the ordinary course of interstate trade and commerce. Of the five operating companies, one was under contract to operate the properties of two of the others and the four non-operating companies were each financially interested in one or more of the operating companies either by lease, by contract, or by the ownership of all or a majority of their stock.

The mining of coal as conducted by these companies is not a manufacturing business but includes the placing of the coal on railroad cars for interstate shipment to the vendees thereof, the necessary employees of such companies including men who placed for loading, loaded and delivered to the common carriers cars of coal for inter-

state shipment, such interstate trade comprising about 75% of plaintiff's output and being, with the good will incident thereto, an essential feature of plaintiff's business, without which its properties could not have been profitably operated.

Defendant, United Mine Workers of America, is an unincorporated association of mine workers with a membership exceeding 400,000, subdivided into 30 districts and numerous locals, the Local Unions being a part of the respective District Branches in their several territories over which the latter have jurisdiction, and every member of the Local and District Branches being a member of the United Mine Workers of America and subject to its Constitution and By-laws as well as to that of his respective District and Local.

Each of the District Branches and Local Unions are AGENCIES **created by the United Mine Workers of America to carry out the purposes and objects of said national organization and more particularly to act with and for it in carrying out the general combination and conspiracy in restraint of interstate commerce hereafter set forth.**

Defendant District 21 is one of the District Branches of the National Organization, having jurisdiction over Arkansas, Oklahoma and Texas, and the various Local Unions named as defendants are affiliated with it and subject to its laws, the several Local Unions being themselves unincorporated associations having separate Presidents and Secretaries, but they and their members being all a part of the National Organization. By reason of the large number of such membership the complaint prays that the Unions named as defendants be brought into Court by service on the several officers. Certain of the defendants named, are officers respectively of the National Union and of District 21, and sufficiently represent these associations for service and trial in this action.

The United Mine Workers divides all coal mines into two classes, "Union," or "Organized" mines, operating under a contract with the Union to employ only Union

men, and "Open Shop" or non-union mines which refuse to make such a contract, although many of the latter (including plaintiffs, as averred in paragraph 23), do not discriminate against union men as employees. Owing to the unreasonable restrictions and regulations imposed by the Union on the organized mines, they are conducted wastefully and inefficiently and the cost of production of Union coal is thus unnecessarily enhanced to such an extent as to prevent its successfully competing in the market with non-union coal. The object of the conspiracy and combination of the United Mine Workers and those acting in conjunction with them was the protection of the Union mined coal by the prevention and restraint of all interstate trade and competition in the products of non-union mines. (Paragraphs 11 and 12. See also paragraphs 16, 18, 19 and 21.)

The complaint sets out certain particulars in connection with such restrictions imposed by the defendants, such having been introduced by the last amended complaint in answer to defendants' rule to make more definite and certain.

The complaint then enumerates the 23 States in which coal mining is conducted and alleges that the coal mined in each comes into competition in interstate commerce, directly or indirectly, with that mined in practically every other State, the coal mined in plaintiffs' Arkansas mines competing directly with that mined in Illinois, Kentucky, Alabama, New Mexico, Colorado, Kansas, Oklahoma, and Arkansas for the markets of Louisiana, Texas, Oklahoma, Nebraska, Kansas, Missouri, Iowa and Minnesota for trade in which, but for defendants' unlawful interference, plaintiffs would have engaged in 1914. The bituminous mines in the greater part of the above territory are union mines, the principal exceptions being Alabama, West Virginia, parts of Pennsylvania and Colorado, which the defendants had so far been unable to organize.

The United Mine Workers, the defendants, and many others to plaintiffs unknown, acting in conjunction with

defendants, are and for many years past have been engaged in an unlawful combination and conspiracy in unlawful restraint of interstate commerce in coal, and in an unlawful attempt to monopolize the same for union mines, the purpose, object and necessary effect of which, is, by hampering and increasing cost of production and shipment to non-union mines, by preventing them from obtaining employees and from shipping their product in interstate commerce, by suppressing and destroying their business, and by precluding any non-union mines from commencing operations, to secure for the defendants a complete monopoly and control of the labor in coal mines, to keep all non-union coal out of interstate commerce and competition and to monopolize the same for union coal, and to maintain the price in such markets for union coal by protecting it from the competition of non-union coal which, but for such combination, would be mined by the more efficient non-union mines, such protection being accorded in pursuance of understandings and agreements with the Union mine owners acting in conjunction with defendants in such conspiracy.

In furtherance of such combination and conspiracy the United Mine Workers, working through their district organizations, and defendants, have ordered and coerced strikes in non-union mines in different States, and by a variety of illegal methods, physical violence, intimidation, etc., have prevented the employment of men in such mines, have injured and destroyed their facilities for production and shipment, and have interfered with and attempted unduly to enhance the cost of producing and shipping their coal so as to make it impossible for them to sell it in interstate commerce in competition with that produced in union mines, all this having been done with the purpose and effect of preventing non-union operators from continuing in interstate commerce except on terms dictated by defendants.

In furtherance of such conspiracy the United Mine Workers and its District Branches since 1898 have

entered into negotiations, understandings and agreements with the operators of union mines in Ohio, Illinois, Indiana and other States by which it was understood that in consideration of the adoption of union conditions by the operators, the defendants would prevent the production and shipment of coal by the non-union mines in other states, in interstate competition with such union mines.

The last amended complaint, in pursuance of defendants motion to make more definite and certain, enumerated certain particulars in connection with such negotiations and understandings with the union operators (paragraph 21).

In pursuance of such combination and conspiracy, the United Mine Workers and those acting in conjunction with them, at various times since 1898, entered on a general campaign and crusade to suppress interstate trade in non-union coal, and to destroy the business of non-union operators, conducting strikes by illegal methods in Pennsylvania in 1911, in Colorado in 1913 and 1914, and in West Virginia at various times since 1906.

Early in 1914 all the plaintiff companies decided that the operating companies would go on a non-union or open shop basis, without discrimination against any employee because of his union affiliations, and about the middle of March two of them (the Prairie Creek Coal Mining Company and the Mammoth Vein Coal Company, whose properties were to be operated under contract by the Mammoth Vein Coal *Mining* Company) closed down and discontinued as union mines preparatory to reopening open shop in April; another (Hartford Coal Company) had not been in operation for a year but planned to start open shop as soon as expedient, at least in the summer of 1914, and the fifth, Coronado Coal Company, continued operating with the union until April 18, 1914, when its employees struck because of its unity of interest with the other non-union operations of these plaintiffs. Each of these companies had made preparations, warranted by existing business conditions,

to do a profitable interstate business during 1914, which defendants well knew and aimed to prevent.

In April, 1914, certain of the operating companies started open shop, employing men to mine, load and ship coal in interstate commerce, but defendants and those acting in conjunction with them, in furtherance of their conspiracy to drive non-union coal out of interstate commerce, and of their understanding with the union operators to protect them from non-union competition, by illegal means, drove and frightened away plaintiff's employees, including those directly engaged in shipping coal to other states, prevented plaintiffs from employing any other men, destroyed the structures and facilities for mining, loading and shipping coal, and the cars of interstate carriers waiting to be loaded and those already loaded with coal in and for interstate shipment, and prevented plaintiffs from engaging in or continuing to engage in interstate commerce, intending thereby and for the sole purpose and object and with the effect of destroying plaintiff's interstate business and preventing plaintiff's coal from coming into competition with union mined coal in interstate commerce.

In pursuance of defendants' motion to make the complaint more definite and certain, and under order of the District Court prior to trial, the last amended complaint specified the names of certain of the defendants and the persons acting in conjunction with them who participated in some of the overt acts above mentioned, the dates of certain of such acts, and the names of certain of plaintiffs' employees who were driven away by defendants, the complaint alleging that other similar acts were committed by defendants and other persons in pursuance of such conspiracy on other dates "between April 1st, 1914, and July 20th, 1914, and subsequent to July 20th, 1914, down to the filing of this suit *and subsequent thereto*, by which there was created a continuous atmosphere of terrorization which effectually prevented any person from entering or continuing in the employ of said companies through fear of harm or violence to their persons or property from defendants."

Except for such combination and conspiracy of defendants and the acts done in furtherance thereof, plaintiffs would have done a large and profitable business, but by reason thereof their business and property was damaged and injured to the amount of $740,689.42, for treble the amount of which this suit was brought.

Certain of the funds of the United Mine Workers in Arkansas were attached and judgment prayed for $2,222,068.26 with costs and reasonable attorney's fees.

Such is a brief summary of the complaint, sustained by the Circuit Court of Appeals as stating a valid cause of action.

The Answers.

The answers by defendants denied practically all the averments of the complaint and alleged that they were unincorporated associations, having a membership of more than 400,000 members engaged in coal mining in the United States, Mexico and Canada. (Rec. 247, 261.)

Certain Undisputed Facts.

It is not apparently disputed by the other side that the record contains competent evidence of many of the facts alleged in the complaint.

The appointment by a single decree of the one receiver for the nine companies was not denied in the defendants' answer, and was shown by the record of the Court in which the trial was held.

The participation by plaintiffs prior to 1914 in interstate commerce in coal, their shipment of coal to other States, the building up by them with an investment of over half a million dollars of a valuable trade and good will for their product in other States, and the fact that more than 75% of their annual shipments of coal of a value of $465,000 were sold to customers and were shipped direct to markets outside of Arkansas, which interstate business was absolutely essential to their operation, was proved without attempted contradiction.

Bache (688, 670, 672); Puterbaugh (2060); Castle (1827); Thrasher (1841).

Although the unity of interest between the various plaintiff companies was denied in defendants' answer, it was fully shown by the evidence, and indeed, defendants' counsel during the entire course of the trial made much of the fact that all the companies were under one management, contending that Bache and Denman, the stockholders in the parent company, were the real parties in interest.

It was not seriously disputed at the trial and is not apparently now disputed that in April and July, 1914, the plaintiffs' business and properties were destroyed by fire and dynamite and their employees driven off and some of them murdered by a mob composed for the most part of members of the United Mine Workers of America and that, as a consequence of the insolvency resulting, the Companies' leases were forfeited.

Nor, indeed, was it seriously disputed at the trial that the damages resulting directly to plaintiffs were far in excess of the $200,000 verdict awarded by the jury. Two weeks after the destruction of the property, the United Mine Workers' Journal estimated the damage at $200,000 (2398), and later on in the fall again gave it as $500,000 (2403).

Defense.

The defense by the United Mine Workers at the trial rested solely on the contentions:—

1. That the destruction of plaintiffs' business and property, by whomever it was caused, was brought about not for the purpose of benefiting the Union or of preventing or restraining interstate commerce or competition in non-union coal, but solely as the result of a purely local outburst against plaintiffs' employees, resulting from alleged illegal acts on their part in insulting little girls, making alleged illegal arrests, and generally terrorizingthe community.

2. That the National Association, the United Mine Workers of America, was not so organized and conducted as to make its associate funds responsible for acts of the officers or members of its District or Local Branches, in which the officers of the National Organization had had no direct participation, and which had not been specifically authorized, directed or approved by it. Even though plaintiffs' property and business were shown to have been destroyed in the course of and as the result and object of the Prairie Creek Strike, this was a purely local affair, concerning only the Organization known as District 21, with which the National Organization had nothing to do, and in which neither it nor any of its officials in any way participated and which neither it nor they had officially approved.

It was on the two foregoing propositions that the case in the Court below turned.

Before taking up in detail the proof of intent on the part of the Union, we deem it advisable to examine the Constitution and structure of the United Mine Workers' organization.

While logically the following analysis might have been inserted hereafter, in connection with the discussion of our Fourth Point, dealing with the liability of the National Union for the acts of its District and Local Branches, as a practical matter it is deemed necessary, in order to appreciate the significance of the facts of this case, to have a preliminary understanding of the organization of the defendant Association.

Organization of the United Mine Workers.

The United Mine Workers, although unincorporated, is effectively organized as a business institution.

While the Association, as such, does not make profits or distribute dividends, and while the members do not work for it but it for them, the same was true of the Transmissouri Freight Association and the Joint Traffic

Association. The members have joined forces, created an organization and contributed a common fund to promote their pecuniary and business interests.

The United Mine Workers is run along the line of a modern business institution. It borrows large sums from banks to carry on its activities. (Green, page 2507).

The most important feature of its organization, for purposes of the question here involved, is the absolute centralization of ultimate power in the National Organization and the division of the National Association into branches and sub-branches which are constituted and act as the agencies of the Main Association in carrying out its objects.

The complaint avers in paragraph 7 that the District and Local Branches are "agencies" created out of itself by the National Union to carry out its purposes, and that in carrying out the present conspiracy District 21 and the Locals acted "for and with" the National Union.

The Main Union of the United Mine Workers was not formed, as was the Confederation of States in 1783, by the getting together of a number of Local or District Associations and the delegation by them to a confederated association of limited powers, reserving the balance to the constituent branches.

The United Mine Workers was formed, not from the bottom up, but from the top down.

The Local and District Branches did not create the National Association. They were created by it.

The individual miners got together and formed the National Association, which delegated to an Executive Board, representing the whole association, power to create subdivisions of the whole, to admit new members, and to form them into new subdivisions.

The theory and basis of the organization is clearly explained in an authoritative editorial in the United Mine Workers Journal found on pages 518–520 of the Record:—

"* * * The International Organization is divided into Districts, Sub-districts and Local Unions, all receiving their existence and authority from the International headquarters and all subordinate to International authority. **This was done in order that there might be no conflict of authority in the adjustment of the various questions affecting the rights of the membership.** * * *

"The International Organization exercises its authority over the Districts, Sub-districts and Local Unions, and this authority is delegated to the International Union, not by the District or the Subdistrict, but by the representatives direct from the Local Union. **The authority of the International Union is derived direct from the membership** and the authority is delegated to the International Organization to divide the various mining communities of the country into districts and sub-districts."

This basis of organization is clearly carried out by the constitution of the National Organization which is found on pages 419–451 of the Record.

The first two sections of Article III provide as follows (420):—

"ARTICLE III.

JURISDICTION.

"SEC. 1.—The International Union shall be composed of workmen eligible for membership in the United Mine Workers of America, and may be divided into Districts, Sub-Districts and Local Unions.

"SEC. 2.—**All Districts, Sub-Districts and Local Unions must be chartered by and shall be under the jurisdiction and subject to the laws and rulings of the International Union.**"

By Article IV it is provided that Districts **may be** formed with such number and territory as may be

designated by the International Officers and may adopt such laws for their government as do not conflict with the laws of rulings of the International Union. Districts are permitted to sub-divide themselves subject to change by the International Executive Board.

The supreme power in the Association is vested in the National Conventions, which meet biennially or on special call by the Executive Board or by five or more districts, and are composed of delegates from the various local unions, the voting power of the delegates being regulated in accordance with the membership of the locals represented by them.

Only a convention can alter the International Constitution (Art. XX, Sec. 9) although the International President is given power to interpret it (Art. IX, Sec. 7).

By Article XI, Sec. 24, it is provided, that between Conventions, full power to direct the workings of the Organization, shall rest in the International Executive Board, which consists of the International President, Vice-President and Secretary-Treasurer, *ex officio*, and one delegate from each District.

The entire membership is divided geographically into Districts, 26 of which were represented by active organization in 1914. The larger of these are sub-divided into Sub-Districts. Although theoretically the Local Unions may be considered sub-divisions of the Districts or Sub-Districts, actually the existence of the Local Unions in a District always precedes the creation of the District by the National Executive Board. The Locals are formed by the National Organizers, appointed by the President, being numbered consecutively in the order of their formation throughout the whole country. When sufficient Locals are organized in a given region a District organization is created by the International Executive Board, and the District Officers are given authority to administer it.

While the Districts, Sub-Districts and Locals have their own officers, elected by them, and their own treasuries, they are not, as the witnesses and counsel for defendants would have had it appear, autonomous, nor

may they use their funds except within the limited sphere for which by the International Constitution they were authorized to acquire them,—the furtherance of the aims objects and purposes of the Organization by which they were created and of which they are a part.

By Sections 25 and 26 of Article XIV it is provided (440):—

> "SEC. 25.—No Local Union shall be allowed, for any reason or purpose, to divide its funds among its members, nor make donations to strikes unless said strikes have been endorsed by the American Federation of Labor or an affiliated organization. Any Local using its funds for other than legitimate purposes, shall be fined double the amount so used, the fine to be collected by the District and turned over to the International Secretary-Treasurer.
>
> "SEC. 26. Should any Local Union for any cause disband, the charter and all the moneys and supplies belonging thereto must be sent to the International Secretary-Treasurer by the Local Officers thereof."

The same rule and practice applies to District Branches (see *infra*, pages 21–23).

Since (as we shall presently show) the Executive Board has power at any time to disband a District and to assume direct charge of the affairs of the Organization in its jurisdiction, and since the President may at any time revoke the membership of any member or the charter of any Local, the International Officers obviously have the membership, the funds and the property of the Districts and Locals under their absolute control. So-called loans by Districts to the National are merely book-keeping entries, like the inter-departmental or branch accounts of a large corporation. In fact, that is what the Districts and Locals really are. They are Branch Offices of the Company.

Even in the constitution of their own membership the Locals are not autonomous. They are compelled to

recognize the transfer card of a member coming from another Local and compelled to admit any qualified miner to membership (Article XV, Sections 9 and 17) on pain of paying him for his time and expenses (Article VI, Section 5).

Members who consider themselves unjustly treated at the hands of the Local or District officers may appeal from the Local to the Sub-District, the District, the International Executive Board and finally to an International Convention (Article III, Section 3; Article VI, Sections 2–5).

The funds of the International Organization are obtained by a *per capita* tax of twenty-five cents per member per month, collected by the Locals and by them turned over to the National Secretary-Treasurer (Article XIV, Section 13). (This amount has, we understand, been largely increased since 1914).

The Executive Board is also authorized to levy special *per capita* assessments (Article IX, Section 25. See also Rec., page 1845).

The Board is the ultimate custodian of the funds of the Union (Article IX, Section 26).

Article VII of the Constitution provides that the International Officers shall consist of a President, Vice-President, Secretary-Treasurer, three Auditors, three Tellers, the delegates to the American Federation of Labor, and the International Executive Board members, all but the latter being elected by referendum vote of the entire membership. The Board members are elected by the membership within their respective Districts, but when so elected become officers of the whole association.

In reading the Constitution, it is important to bear in mind that the Board members and the Executive Board itself are specifically designated as "officers," to whom therefore apply the other provisions of the constitution relative to officers. The familiar corporate distinction between Directors and Officers does not apply here.

While the Executive Board is nominally over the President and while by the Constitution it is his duty to

carry out their instructions (Article IX, Section 12), he is really omnipotent so long as he gives no ground to a convention to impeach or recall him for malfeasance (Article XI, Section 29), since when the Executive Board is not in session, the individual members are subject to his direction (Article IX, Section 31 also Rec. 372), and since he has power by Article IX, Section 3, to suspend or remove any international officer or appointed employee for insubordination.*

Since by Article IX, Section 7, it is made part of the President's duty to "interpret the meaning of the International Constitution" subject only to repeal by the Executive Board, which he can obviously control, he is for all practical purposes, a Czar of Czars.

Article XIX entitled "Official Journal" constitutes the United Mine Workers Journal the "official organ of the Organization." It is published by the International Executive Board, the editor being appointed by the President (Rec. 505).

The control by the National Association over the District and Local organizations is thoroughly effective

The President may suspend or expel a member and he or the Executive Board may forfeit the charter of a Local Union which is not in its or their opinion, carrying on the work of the Organization in a proper manner. **This has actually been done in practice, the Record showing, that in July, 1911, charters of 28 Locals were forfeited** (Rec. 3170).

So, too, the Executive Board may suspend or disband any District Branch, take possession of its funds and administer its affairs, and this also has been done in practice.

In case of an Association of this type what the parties

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* The contention that Article IX, Section 3, does not apply to Board Members is effectively answered by a comparison of it with the preceding section, Article IX, Section 2. "He shall fill by appointment all vacancies occurring in any International office, except *International Board Members*, who shall be elected by the District in which the vacancy occurs."

"Art. IX. Sec. 3. He may suspend or remove any International Officer or appointed employee for insubordination *or* for just and sufficient cause."

have actually done and what powers they have actually assumed and exercised in the management of the Organization are even more important than what their Constitution says.

The practice with regard to the suspension and abrogation of District and Local Branches by the National Officers was summarized by the witness Green, the Secretary-Treasurer of the National Union (Rec. 366):—

"Q. Mr. Green, have any district organizations been organized and then disbanded, that you know of?

"A. Yes.

"Q. Which ones?

"A. District No. 16.

"Q. Where was that?

"A. That comprises the Georgia District and the Maryland District.

"Q. Fifteen is not here any more. Has that been disbanded—Colorado?

"A. Fifteen—the charter of District 15 has been suspended.

"Q. And 26 and 28, have their charters been suspended?

"A. They are abandoned.

"Q. And 29—that was another one in West Virginia, was it not?

"A. The charter there was suspended, but it has been re-established recently.

"Q. Were there ever any Districts 3 and 4?

"A. Not that I can recall. I cannot recall that Districts 3 and 4 were ever in existence.

"Q. District No. 19 was disbanded, too, was it not—Tennessee?

"A. Suspended. The charter was suspended.

"Q. When these districts were suspended, what was the practice? How was that done?

"A. The international organization took charge of the territory embraced within the district covered by the charter rights of the district.

"Q. How did they do that?

"A. The affairs of the district were administered by the International Union instead of by a full and complete set of district officers.

"Q. What became of the district officers?

"A. They were discontinued.

"Q. And if they had any funds they came back to the International Union, did they?

"A. Oh, yes; they reverted to the International Union.

"Q. By what kind of a resolution or action was that done? By a resolution of the International?

"A. The resolution of the Executive Board.

"Q. They would pass a resolution that the district was suspended or abandoned and then notify the district officers, would they? Where a district was suspended they would pass a resolution that the district was suspended and notify the district officers to that effect?

"A. Yes, sir.

"Q. Then would the district officers go out of office when a district was suspended?

"A. Automatically.

"Q. What would be the difference between the suspension of a district and the abandonment of it?

"A. Well, the difference is this: That a suspension of a district merely means that the district autonomy has been suspended, and that the International Union itself directly administers the affairs of the district. The work within that district goes along under the authority and control and direction of the International Union instead of under the control of district officers. Usually the suspension is temporary and later on the charter and the district and all its rights are restored. When a district is abandoned the charter and supplies for the district are withdrawn, and all activity.

"Q. Then it is just as if it never had existed?

"A. Just as if it never had existed.

"Q. And the same procedure was gone through in

case of the suspension and abandonment of a local, was it?

"A. I think there is a little difference.

"Q. How would the suspension or abandonment of a local union be brought about?

"A. **The International president has authority under our law to revoke the charter of a local union.**

"Q. How would he do that?

"A. Notify the local union that the charter of the local was revoked.

"Q. And then its funds would revert to the International Union and not to the district?

"A. **The funds of the local union would revert to the International Union, and they would not exist as a local union any longer.**

"Q. In order for them to exist, they would have to be re-chartered and the charter signed by the president?

"A. A new charter issued, and the local union re-chartered.

"Q. I understand that where the district branch was abandoned, that would be by a resolution of the International Executive Board of the same general nature as suspension, except that it would go further in its action and in its effect?

"A. Yes; the International Executive Board would take that action and the district would be abandoned.

"Q. And the funds would come back, if they had any, to the main union?

"A. Yes, sir; **the property and funds belonging to a district reverts to the International.**

"Q. **Then the president has not any authority to suspend or revoke the charter of a district branch?**

"A. **The International Executive Board has that authority."**

Members, Locals, Sub-Districts and Districts are but part of the National Organization, chartered by it, under

its jurisdiction and subject to its laws and rulings, subject even to having their existence terminated by the power which had created them.

That the officers of the various District Organizations were, as such, officers of the International Union and were so regarded by those in authority is clearly shown by the testimony of John P. White.

When his deposition was taken at Indianapolis in August, 1917, he was still President of the National Organization and as such had power to interpret the National Constitution (see Article IX, Section 7, Rec., 423).

At the outset of his testimony, after stating that he was then President of the United Mine Workers of America, he was asked what position he occupied prior to that. He replied:—

"President of the Iowa Miners."

The questioner having in mind his prior connection with the International Organization as distinguished from the District (he was Vice-President 1908–1909), again put the question (479):—

"Q. You did not occupy any position before that (April, 1911) in the United Mine Workers, for the year before that—from 1910 to 1911?

"A. Yes, sir.

"Q. What position?

"A. President of the Iowa Miners.

"Q. You were Vice-President of the United Mine Workers of America to April 1, 1910, were you not?

"A. I was immediately—up to the year 1910 I was president of the Iowa Mine Workers, the Iowa branch organization.

"Q. During what period were you the Vice-President of the United Mine Workers?

"A. 1908–1909.

"Q. And did you occupy any position prior to that?

"A. Yes, sir.

"Q. What position?

"A. President of the Iowa Miners.

"Q. For how long?

"A. I was president and secretary-treasurer for about twelve years.

"Q. So you have occupied an office in the United Mine Workers since 1896?

"A. Yes, sir; I have been there since about twenty years."

Again in White's examination at the trial, in answer to his own counsel, he said (1626):—

"Q. Have you had any connection with the defendants, United Mine Workers of America, officially or otherwise, and if so, state what?

"A. I have been an officer of the United Mine Workers of America up until a few days ago, for twenty consecutive years."

The unity of the National Organization and its several branches is further strikingly emphasized in an extract from the Annual Report of the Treasurer of the International Organization for the year 1906—before the Union attained its present size and strength (509):—

"The amount we have in our national treasury does not by any means show the full financial strength of **our organization** or its defensive power.

"There is in the National Treasury..	$389,546.40
"Reports from twenty of our twenty-three Districts show in the districts treasuries.....	1,536,078.03
"Reports from twenty-one of our thirty-one sub-districts show in their treasuries.....	115,449.99
"Making a total in the treasuries of the various branches of our organization of.....	$2,679,134.43

"These figures would undoubtedly be materially increased if we had complete returns from the Districts, Sub-districts and Local Unions."

Article XVI of the Constitution of the International Organization is devoted to the subject of "Strikes," which are one of the means specified in Article II, Section 2 (419) by which the organization proposes to attain the objects for which it was formed.

A careful analysis of the first three Sections of this Article is very important to the present question. They are as follows (446):—

"ARTICLE XVI.

Strikes.

"SEC. 1. No District shall be permitted to engage in a strike involving all or a major portion of its members, without the sanction of an International Convention or the International Executive Board.

"SEC. 2. **Districts may order Local strikes within their respective Districts on their own responsibility** but where local strikes are to be financed by the International Union they must be sanctioned by the International Executive Board.

"SEC. 3. Strikes shall not be called in any unorganized field without the sanction of an International Convention or the International Executive Board, and no financial aid shall be furnished by the International Union for the support of any strike until after the strike has been in effect four weeks, unless otherwise decided by the International Executive Board."

These provisions recognize four different classes of strikes, the conduct of which is prescribed by the Constitution.

1. Strikes involving all or the major portion of the members of the District.

Such a strike may not be called or conducted by the

District Organization without the prior sanction of the International Executive Board.

2. Local strikes financed by the International Organization.

Here too the prior expressed sanction of the Executive Board is necessary.

3. Strikes in an unorganized field.

Again the International sanction is a pre-requisite.

4. Local strikes, in unorganized fields, which are not to be financed by the National Organization.

In this instance only is the District given power **by the Constitution** to order the strike without consulting the International Officers.

This does not mean, however, as plaintiffs in error would have it appear, that in **conducting** such a local strike the District does not act as the representative of the International Organization. (Brief of plaintiffs in error pp. 98, 99.)

Quite the contrary.

Whereas in the first three classes of strikes the District must in each instance secure express sanction and authority from its superior, before calling the strike, in the last instance it is given blanket power, **by the Constitution,** to **order** local strikes without bothering the International Officers with the details.

It is as if the Directors of a corporation instructed a branch office that in case of large purchases it must secure the approval of the Home Office, but that in purchases of less than $10,000, it might act on its own responsibility. Obviously this would not mean that for the smaller purchases the Branch office alone would be liable. Such a provision would be invalid to exempt the corporation even if it were so intended.

The intention is clearly an extension of power in the agent rather than an attempted limitation of the liability of the principal.

The word "responsibility" is used in the sense of "initiative" rather than in that of "liability."

The Local and District Organizations derive their entire power, authority and existence from the International, which delegates to them the authority to carry out its objects in certain particulars in connection with strikes.

In a major strike or in one in an unorganized field, or in a strike where financial aid is required directly from the treasury of the International Union, the District may not order the strike without the express sanction in each particular instance of the International Officers.

In the sole case of a local strike in an organized field which is to be financed by the Districts without National assistance it is given blanket authority.

In such a case it acts, however, solely by virtue of the authority thus given it,—acts as the authorized agency of the International Association, which created it, of which it is an integral part, and of which it is the authorized representative.

The whole argument of plaintiffs in error in connection with the liability of the National Organization for the Acts of the Local and District Branches is founded on the assumption that by the Constitution the National Association has specifically disclaimed responsibility for the manner in which Local strikes are *conducted*.

After quoting correctly the provision giving the Districts power to *order* local strikes on their own responsibility, plaintiffs in error proceed to discuss it as if it provided that in conducting such a strike the District should alone be *liable*.

Obviously the provision was intended to have no such effect, its effect being to extend the power of its Branch or Agent to the ordering of local strikes without getting the express sanction of the Home Office, which is required only where financial aid is to be sought from the National Treasury proper.

Another important consideration must also be borne in mind in considering the foregoing provisions of the Constitution.

There is not evidenced the slightest intention even in the case of Local Strikes, of a relinquishment by the International Organization of ultimate power and control over the District and Locals in the conduct of such strikes.

It is merely provided that the Districts **"may"** order local strikes on their own responsibility—without in each instance securing the sanction of the International Executive Board. The latter Board or the National President can obviously, however, control even a Local Strike throughout its course, since all that it is necessary for him to do, in case the District is not conducting the strike in a manner to do credit to the organization, is to threaten the District with suspension or extermination and the forfeiture of all its funds unless it behaves.

That the Prairie Creek Strike was a Local Strike within the meaning of Article XVI, Section 2 of the Constitution, which District 21 had power to conduct without further action by the International Officers, was admitted by the miners' President, John P. White (page 1637).

It did not involve a major portion of the members, was not in an unorganized field, and no International funds were asked by the District in conducting it. Indeed at the time, the National Association had on its hands more than it could finance,—the West Virginia two-year strike just ended and that in Colorado at its height.

If John P. White had not really approved **of what he knew** District 21 had done up to May 18, when he attended the Convention at Fort Smith, he could by a word have stopped short all intimidation and all violence and have prevented any further injury to the plaintiffs' property.

If he had not approved of the destruction of the property on July 17, he could have at once have forfeited the charters of all the ring-leading locals, expelled the offending members from the organization, and had the Executive Board assume the functions and duties of District 21 (See *supra*, pp. 21–23).

If he had done this and had acted in good faith there

there would have been no need whatever of four Troops of United States Cavalry in the Hartford Valley in November.

Instead, however, he merely incited the members to further excesses by a fire-eating speech praising their fighting spirit and damning the employer class for protecting their property. (See *infra*, pages 131–134 hereof.)

In so doing he fixed the liability of the National Organization not only as that of a Principal ratifying the act of its duly Authorized Agent, but as a direct participant, conspirator and accessory both before and after the fact.

Our case against the National Association does not rest solely on the acts of the District and Locals as authorized agents, or on the ratification of such acts by the National Officers, the Journal and the Conventions.

The evidence showed beyond a shadow of a doubt that the National Officers and Executive Board knew of, approved **and incited** the outrages at Prairie Creek **while they were going on.**

The ultimate control of the National Organization over the District, even in the case of strikes conducted by the District, is clearly recognized by the District Constitution. By Section 2 of Article XII, entitled "Strikes" it is provided that "before final action is taken by the District upon questions that * * * may require a strike to determine, the President and Secretary of the aggrieved District shall jointly prepare, sign and forward to the National President a statement setting forth the grievance complained of, the action contemplated by the District together with the reasons therefor, **and await the decision of the National President and be governed thereby."** (Rec., 2849.)

While there is no direct and specific evidence in this Record as to whether in the case of the Prairie Creek Strike, Stewart and Holt, the District President and Secretary-Treasurer, complied with this provision of their constitution, the presumption would seem to be, in the absence of any evidence whatever on the subject, that they did.

What does appear is that on April 6th, when the trouble started, President Stewart, of District 21 and International Board Member Mullen of District 21 were at Kansas City where President White of the International Union also was; that on April 8th Stewart and Mullen came to Fort Smith, stayed two days, and then went back to Kansas City, all on union business, their expenses being paid, Stewart's by District 21 and Mullen's out of the International Treasury; and that the next week the men were called out at Coronado and a notice of the strike was inserted in the United Mine Workers Journal.

White certainly learned the facts from some source prior to his report of the April 6th Riot to the Executive Board on May 4th (see *infra*, p. 127–128 hereof).

Again they all had a good chance for a full discussion during the week's convention at Fort Smith from May 18-23, which President White attended.

It would not, however, seem to be material whether White expressly sanctioned the Prairie Creek Strike or merely acquiesced in and ratified what he knew the authorized agency of the National Union was doing and had done in connection with it, on its behalf, and in the furtherance of its purposes and objects.

In either case the Association is clearly liable.

We have thus an Organization absolutely centralized in ultimate authority, but to the subordinate branches, to which have been delegated power to act for the Association in carrying out its objects.

The general theory of the organization and of the grant of power to the Districts with regard to the ordering of strikes was, that the national officers should directly handle the larger conflicts and the organization of the unconquered territory, but once a field was organized, it was turned over to the District, as a sort of prize-crew, to hold and administer for the Association, the National Organization reserving, however, supreme authority at any time to assume active charge.

PROOF OF INTENT AND OF UNION PARTICIPATION AND RATIFICATION.

The principal question submitted by the Trial Court to the jury was the intent and purpose which actuated those who destroyed plaintiffs' business and property.

Of what, then, consisted the proof on the part of the plaintiffs that their business and property was destroyed for the purpose of benefiting the United Mine Workers by preventing and restraining interstate commerce or competition in non-union coal?

This proof and the resultant liability of the union may be sub-divided under five heads:—

1. The impregnation of the entire organization of United Mine Workers, officers and members, in their negotiations with Union operators for many years prior to 1914, with the motive for the suppression of the business of non-union mines,—the prevention of their competing in interstate commerce with unionized operations.

2. The acts and declarations of the officers and members of the Union and their sympathizers participating in the destructions of plaintiffs business and property, and the use of the Union funds therefor.

3. The statements in defendents' official publications during the course of such acts and the official acts by defendants in acknowledgement that the destruction of plaintiffs' business and property was being effected by Union officials, members and sympathizers for the purpose of benefiting the Union.

4. The acceptance by the Union of the benefits to it of the destruction of plaintiffs' business.

5. The failure by defendants openly to repudiate or discipline its officials and members known by it to have participated in the illegal acts causing the destruction of plaintiffs' business and property.

1. Formation and Development of the Motive for Suppressing Non-Union Operations.

As heretofore noted, the complaint alleges that defendants destroyed plaintiffs' business and property with the intent and for the purpose of preventing plaintiffs from shipping coal in interstate commerce, for the protection of the coal produced by Union operators in interstate markets against the competition of plaintiffs' cheaper mined non-union coal, and in pursuance of "negotiations, understandings and agreements" between defendant and certain Union operators that in consideration of the recognition by such operators of the Union and their granting the eight-hour day and other favorable Union conditions, the Union would, by all means in its power, afford them such protection.

None of the Union operators were made parties defendant to the suit, nor is it alleged that any of them participated directly in any of the acts which resulted in the destruction of plaintiffs' business and property.

None of such operators were mentioned at all by name in the original complaint, the only reason for certain of them being specified in paragraph 21 of the last amended complaint being the order of the District Court requiring their specification on petition by defendants to make the complaint more definite and certain in this regard.

Although they were in a sense parties to the general conspiracy against all non-union operators, in that, for their own ends and with knowledge of the probable consequences of their acts and urgings, they furnished the stimulus and motive to defendants to prevent plaintiff from starting its mines non-union, it is not alleged that any such union operators were such direct participants in or accessories to the immediate cause of plaintiffs' injury as to make them personally liable therefor.

Plaintiffs, it is true, during the trial, offered to prove, from the United Mine Workers' Journal, the official organ of the Union, the wholly illegal methods and activities sanctioned and approved by the Union in the course of previous strikes conducted by it, which if known to the

Union operators (as it must have been), might well have charged them with knowledge of the necessary results which would follow from stimulating the mine workers to attack other non-union operations (621–629, 630–644). See also as to the Irwin strike in Pennsylvania (Hayes, 1060, 1061), as to West Virginia (Green, 589; McDonald, 1118; Hayes, 1131; White, 1135–1140; Hayes, 1145, 1146), and as to Colorado (568, Mitchell 1047; White, 1136–1140).

Such evidence was, however, excluded by the trial Judge. As the case turned out this ruling was harmless to plaintiff, since no verdict was sought against any operator and the evidence as to defendants' motive and intent, in connection with the negotiations with the union operators, was ample to establish the same, even though it did not directly connect the operators as participants in an illegal conspiracy.

With the knowledge of Union methods possessed by such Union operators, as shown by the record, their persistent urging the miners to use all methods in their power to keep non-union coal off the market might well, in itself, have been sufficient to charge them with what they must have known would be the probable consequences thereof. We need not, however, discuss the academic question as to whether, if the operators had been sued, they could have successfully maintained that they contemplated that the Union would use only legal methods.

The methods used by the miners in carrying our this arrangement were illegal in the extreme,—intimidation, assault, dynamite, arson, murder.

See, in this connection Jayne *v.* Loder, 149 Fed. 21 (4th paragraph of Syllabus).

The negotiations with the Union Operators were relevant and material to plaintiff's case to show that defendants' subsequent crusade and campaign against plaintiff was undertaken and carried out in pursuance of such understanding, under stimulus of the lessons taught thereby, in order to benefit and further the

purpose of the Union and secure the results to be attained thereby, and in order to show that the destruction of plaintiff's business and property did not result, as defendants contended, from purely local causes—was not a spontaneous outburst by an inflamed populace against plaintiff's employees by reason of their alleged obnoxious practices.

Defendants' counsel, throughout the trial, endeavored to confuse the issue by giving entirely undue prominence to the part played by the Union Operators in this case.

Operator after operator was called to the stand by defendants and asked if at any of the meetings between miners and operators which he had attended there was ever any agreement or understanding, written or oral, to destroy plaintiff's mines by bloodshed, arson and murder. Of course they all answered no.

Defendants' counsel, purposely or inadvertently, totally misunderstood or misconstrued the function of the Union Operators in connection with these proceedings, **which consisted solely in furnishing the motive to the miners to benefit their organization by protecting the Union Operators from non-union competition,** the methods to be used being left to the miners, but the operators probably having a pretty fair idea, from past experience, as to what methods would be used.

If the issue were whether a horse which the defendant was found riding toward A's house had been stolen by defendant from B, or had been taken by mistake for another horse to which defendant had a proper claim, it would be proper to show, in proof of defendant's intent, that on the previous day A had told defendant that if he could get this particular horse of B's, A believed he would give him $500 for it. It would be entirely immaterial that in making such statement A had contemplated the employment by defendant only of legal means to acquire the horse, and thus could not be convicted as accessory to the theft. It would also be immaterial that the conversation resulted in no binding contract between defendant and A.

Such was the purpose and effect of the introduction of extracts from the debates during the negotiations between defendants' representatives and the Union Operators in the Central Competitive Field between the recognition of the Union in that field in 1898 and the destruction of plaintiff's mines.

Whether the upshot of such negotiations was shown by oral testimony, or by the record of the proceedings as verified by defendants' own witnesses, including its Secretary-Treasurer, the purpose and relevancy of the evidence was the same,—to show the necessary intent and motive for defendants' acts in destroying plaintiff's business and property, and to give the jury a proper basis for its finding that such acts were done for the purpose of benefiting defendants' organization,—to restrain interstate competition and commerce,—and not for the purpose alleged by defendants.

The development of such motive and intent was shown by the evidence, *first*, in the proof of the negotiations between the miners and operators as related by the oral testimony of several of the participants and as found in the record of such proceedings, and *second*, by the extracts from the proceedings in the conventions attended by the miners alone, and by their Official Journal, showing the effect on the miners of the operators' importunities.

The Joint Conference Proceedings.

Prior to 1898 there was no effective organization among the miners to maintain wages, hours of labor and working conditions, and no organization of operators to maintain prices, to eliminate ruinous competition and to distribute the coal in its "natural channels."

Conditions at this period were described by defendants' witness Taylor.

In 1897 the operators had been through a long and costly strike and were on the verge of bankruptcy through the ruinous competition among themselves. The miners also were on the verge of starvation, due not only to

the recent strikes but also to the low wages they had received when at work. It was a "free for all" condition in which "might made right,"—unrestrained competition (2772).

In the fall of 1897 a conference was called at Columbus, Ohio, between the operators of Ohio, Indiana, Western Pennsylvania and Illinois (the district known as the Central Competitive Field) and the representatives of the miners in this District (2772).

> "We agreed, beginning with that time, to turn over a new leaf, and call a conference, and discuss our matters jointly, and **allow all the operators to have a voice in what his competition would be,** and allow all the miners to have a voice in what they would get, and the work would go into its natural channel, **and the men get the work that belonged to their district, and the operators sell the coal that belonged to their district.** It was with that theory in mind that that conference was called which is now known as the Interstate Agreement, by which the miners, the employer and the employee would counsel together and arrange basic rates (Taylor, 2772–2773).

As a result of the first Columbus conference, another larger conference was called which met at Chicago in January, 1898, and after a discussion of the "competitive conditions" (2772) the so-called Chicago agreement of January 28, 1898, was signed on behalf of the operators of the four States comprising the Central Competitive Field, by the representatives of the miners in each of those States, and by the President, Vice-President and Secretary-Treasurer of the United Mine Workers of America (390).

The first seven Articles of this agreement merely fixed the basic mining wages in the several districts and their relation to each other. Article 5 provided for the eight-hour day.

Article 8 is the provision of the written agreement which is important in the present connection and which

gave rise to the greatest discussion and controversy between the parties in later years. It provided as follows:—

> "8. That the United Mine Workers Organization, a party to this contract, do hereby further agree to afford all possible protection to the trade and to other parties hereto against any unfair competition resulting from a failure to maintain scale rates." (392.)

The meaning and purpose of this clause, and particularly that of the words "unfair competition," **as referring to the competition of coal mined by non-union labor** was fully explained by the witnesses, and also by the parties to the agreement in the "Records" of their subsequent joint conferences which were offered in evidence, hereafter quoted.

In January, 1898, not all the operators in the four States were parties to the agreement. Furthermore, outside these States there were other fields, particularly West Virginia, the coal from which competed directly with that from the four States, but which were totally unorganized.

The 1898 agreement resulted in a reduction of the hours of labor in the Central Competitive Field from ten hours to eight, and in a considerable increase in the miners' wages, despite the reduced hours.

It was evident, however, that in spite of the arrangement at the same time entered into by the operators to eliminate competition among themselves, and to keep the coal in its "natural channels," the Central operators—either in their own field or in West Virginia and other competitive districts—if the employees of the latter were to continue to receive lower wages, to work longer hours, and to be subject to the continued exactions and interferences by the Union officers.

The miners, therefore, in consideration of the increased wages and lessened hours of work provided in the 1898 agreement, promised on their side to get the independent

operators into the fold. This, as clearly shown by the discussion of the agreement in the subsequent debates of the parties thereto, is what was meant by their promise "to afford all possible protection to the trade and to the other parties hereto against any unfair competition resulting from a failure to maintain scale rates."

As a result of the 1898 agreement the higher wages and lesser hours necessarily increased the cost of production to them, but as a result of their agreement among themselves eliminating competition in "forced markets" and keeping the coal in its "natural markets" (2774), they got a sufficiently higher price for it to enable them to pay the men the higher wages. This condition could only be kept up, however, and the higher price of coal maintained, provided the cost of production to the independent operators, who might seek to sell their coal in the "natural markets" of the union employers, should be raised to be on a par with those who had recognized the Union.

The latter condition could be brought about only by the action of the miners in unionizing the competitive non-union mines.

This was what the miners agreed to do under the eighth clause of the Chicago Agreement. In consideration of the increase in wages and the grant of the eight-hour day accorded by the Union operators, the miners agreed that they would see to it, that by forcing union conditions on the competitive non-union operators, the cost of production to the non-union mines would be so far increased as to prevent them from underselling the union operators in the "natural markets" which the latter had agreed to divide up among themselves, and in which, but for the competition of the non-union operators, they could maintain the higher prices agreed on which would enable them to pay the higher cost thus assumed.

As said by the witness Taylor (2774–2775):—

> "Q. Now, as a result of that in 1898, and as it continued later the miner's wages were considerably increased?

"A. Yes, sir, considerably increased, and the conditions of employment were even bettered.

"Q. And in spite of that the operators were enabled to get enough for their coal to pay the increased wages and still make a living?

"A. By having these discussions or trade agreements, the coal found its more natural market.

"Q. And they would get more money for it?

"A. They got enough more money for it in its natural market, rather than its forced market, so that they could pay more wages, and give the men better living conditions.

"Q. And at the same time there were other operators and miners who were in competition with them in the arrangement, and who did not come in, and were still trading on a lower cost?

"A. There were; and they were still battling and fighting with each other, on the old method.

"Q. What way did the miners, what were they to do, in order to protect the operators in the central competitive field?

"A. To have the miners take the same scale rate from the other operators as was paid in the other fields."

We do not contend, as intimated by plaintiffs in error in their Brief (pages 142–143), that the Chicago agreement required the Union to destroy or close up non-union mines.

In fact, however, they frequently adopted this means, particularly at Prairie Creek.

The purpose and effect of the Chicago Agreement in its relation to the present litigation, is clearly brought out in the discussions of that agreement in the subsequent joint conferences of miners and operators in the Central Competitive Field.

These subsequent discussions were introduced in evidence not at all in connection with the subsequent agreements entered between the parties at such conference,

(which later agreements were irrelevant to the present litigation), but as showing the development of the combination and conspiracy among the miners themselves and between the miners and operators for the suppression of non-union production, and especially as showing the object, purpose and motive of the miners in their subsequent action in destroying the non-union mines of these plaintiffs.

These conferences were the schools at which the miners for years received their education in the principle that the existence in the markets of competitive non-union coal was disastrous to their movement and welfare, and that if they were to be able to continue their union relations with the operators with whom they had already entered into agreements, they must at all costs both force the independent operators to accept union conditions, and prevent any union operators from breaking away.

While the brief of plaintiffs' in error contains numerous strictures as to the relevancy and admissibility of these debates (see, for example, Brief of Plaintiffs' in error, pages 20-21, 31), no Assignment of Error is predicated on their admission in evidence, the only assignment of error referring to them being the 13th which does not assign their relevancy or admission in evidence but merely one of the four reasons given by the Circuit Court of Appeals for sustaining their authentication, and which is not covered by any of the Points presented to this Court.

The Reports were authenticated both by the witness Green as the verbatim reports of meetings which he himself had attended, and also by several other witnesses as the Official Records of the conventions, published by the secretaries of the Miners' and Operators' organizations and by them distributed, the printed volumes being used by both organizations by common custom and usage for reference to the debates as the Official Record thereof.

A conclusive answer to the interpretation of the Chicago agreement suggested by Plaintiff's in error on pages

27-29 of their brief is found in the authoritative interpretation thereafter placed upon it by the parties and reiterated by both sides in their subsequent debates.

The Chicago conference was followed by another similar joint meeting at Pittsburgh in January, 1899, at which the agreement of 1898 (with certain modifications which are immaterial to the present question) was extended for another year. Thereafter, the representatives of both the miners and the operators met annually or biennially continuously down through 1916.

The debates at such conventions were offered in evidence (415–416, 461, 475, 654) and extracts from certain of them were read into the record.

Without reviewing in detail these rather voluminous debates, extracts from a few of the passages in the record will show that they established two circumstances (which were also clearly proved by oral evidence and by the extracts from the Journal and the miners' conventions), which are significant in connection with the present cause of action: *First*, that at all their joint conventions subsequent to 1898, the operators were continually reminding the miners of their agreement to unionize the competitive non-union fields and chiding them with their failure effectually to carry out this agreement, and the miners were as earnestly protesting their endeavor to fulfill their contract, recognizing its existence and scope; *Second*, the operators were continually harping on the impossibility of further increases in wages or even of maintaining those in existence, by reason of the competition of the non-union operators, whose cheaper cost of production was enabling them to make increasing inroads in the markets which the union operators regarded naturally tributary to their own mines. (See Traer, 2457, 2458, 2462; McCullough, 2510; Feehan, 2518–2519; Lukens, 2677–2680).

We will also quote in their chronological order certain of the following typical extracts offered from the miners' conventions and from the Official Journal, show the effect on the miners of the demands by the Union operators.

In the 1901 convention at Columbus, Mr. Bogle, an operator from Indiana, said (2353):—

> "At the Chicago convention the United Mine Workers' Organization agreed with the operators of the four States that they would bring West Virginia into the fold. Again at Pittsburgh they promised the same."

At this same convention Mr. Lewis, the miners' Vice-President, urged on the operators the advisability from their point of view of recognizing and extending the check-off, by which the operators were asked to agree to deduct the union dues and assessments from the miners' wages and so facilitate their collection by the Union. He said (page 2355):—

> "MR LEWIS:—I think this conference is getting to that point where we should strip every question clean of every sentiment. I believe when we do that we are getting to a point where we can discuss these questions as they affect our interests jointly, and from that point I, for one, would like to know what the purpose is, and why we inaugurated what is known as the joint movement in the four States represented? In asking that question I am going to answer the question as I understand the purposes why we met. And in doing so I am willing to assume as broad a position and stand on as broad a platform as any man in this hall, it matters not to me whether he represents the operators or the miners
>
> "In the first place, as I understand it, we had something of a guerilla fight in the mining industry—every operator was seeking to enter the market and sell a ton of coal against his competitors at whatever cost. In order for them to do that it was necessary for them to reduce the wages of the miners step by step, until it became a question with the miners of this country whether it was not as

well to starve being idle as to starve working. I am free to admit that under those conditions many of the operators went into bankruptcy. If this be true, and I don't think that it can be questioned, then it was necessary not only for the miners, but for the operators as well, to assume certain responsibilities to give stability to the mining industry. Realizing this we met in joint convention. We agreed on a certain scale for mining, and every man, whether he was in the organization or out of the organization, on our side of the compact was expected to adhere strictly to every term embodied in that contract. You know, and every man in the hall knows, when the first compact was made that the miners of this competitive field were not as well organized as you and we would both like to have seen them, in order that there would be no friction between us in the year following that agreement. We have attempted to the best of our ability to adhere strictly to every agreement that we have entered into. It is true that we have asked—you may put it in the form of a favor if you please—and in some cases we have insisted that the operators would not only recognize the United Mine Workers as a business institution, but that they would go one step farther and help us compel the rebellious of our own ranks to be parties to this compact—not for the benefit of the miners, but for the benefit of the miners and operators jointly. Now let us see how much farther this movement must go to be successful. **As I understand it, it is for the purpose of wiping out competition between us as miners first, viewing it from our side of the question; next for the purpose of wiping out competition as between the operators in these four States.** When we have succeeded in that and we have perfected an organization on both sides of the question, then, if I understand **the real purpose of** *this movement, it is that we will jointly declare war on every man* **outside of this competitive**

field who will do anything in any way endangering the peace that exists between us. What is necessary to do this? Organize our forces in the competing fields so far as the United Mine Workers are concerned. **Go into these outside competing fields and tell your competitors that they have to join this movement whether they like it or not, and give stability to the coal business of the United States."**

The words in italics have been erroneously omitted from this passage as printed in the Record (pp. 2357) and as quoted by plaintiffs in error on pages 31–32 of their brief.

In the 1902 joint convention, Mr. Robbins, a Western Pennsylvania operator, said:—

"MR. ROBBINS:—Four years ago, in the city of Chicago, we agreed to be in the advance guard on the question of an eight-hour day, **with the distinct and absolute promise that unless our competitors were brought up to the same conditions that we would be put back where we were.** And what is the result? None of our competitors have been brought up. In no place that we compete, that I know of, has an eight-hour day been established. We are competing constantly with operators that still have a ten-hour day. Their cost is proportionately less." (Page 2356.)

The effect of the above and similar operators' statements of the miners is well known by the debates in the miners' own conventions, in which they elected their Officers and Executive Board and adopted and altered their constitution and organization.

Thus, in the miners' convention of 1902, the following resolution was adopted:—

"RESOLUTION 33.

"WHEREAS, the miners of Virginia and Kentucky

in the past have been a detriment to the organization in other States by their not being organized,

"*Be It Resolved*, That our National organization shall use its power in all forms to bring these miners into the organization." (Page 538.)

The report of the Committee on Organization to the same miners' convention also contained the following:—

"We, your Special Committee, appointed to formulate a policy which would culminate in a complete organization of all the competitive fields, are fully convinced that the two Virginias have been a menace to the perfection of our organization.

"Therefore, we recommend that the National Executive Board pursue the most aggressive policy that they, in conjunction with the several District Presidents, can pursue to bring about organization in the different Districts, not only in Virginia but in all other districts." (Page 542.)

In the joint convention with the operators in 1904 President Mitchell of the miners said:—

"Every year that we have met in these conventions we have heard the statement that the reason the operators represented here could not comply with the scale of wages proposed with the miners was the fact that they were meeting an **unfair competition** from the Fairmount District of West Virginia." (Page 556.)

After the close of the 1904 Joint Convention the national officers of the miners' Organization recommended to the local miners that they acquiesce in a reduction in wages, giving as a reason that the fact of the non-existence of the Union in competitive non-union States, made it impossible to enforce their demands (page 566).

At the Miners' Convention of 1904 the following resolution, introduced by a Local Union No. 31 from

District 21 (Arkansas, Oklahoma and Texas) was adopted by the convention:—

> "*Resolved*, **That in strict compliance with our** obligations and **teaching** we accord a hearty approval to our National Board on its action in regard to District No. 15 strike, now on, in Colorado, and whatever action taken by the National that in their judgment is necessary to the successful ending in the elevation of our craft in District No. 15 meets our entire approval, for which we pledge our unqualified support, as our knowledge of the field in Southern Colorado in the event of an unsuccessful issue of the trouble now pending would work almost unsurmountable and incalculable damage to District No. 21, as it would be an **unjust competitor** in the same commercial field and could with very little effort undersell and supersede us in the Oklahoma and Southwestern Kansas markets." (568.)

In their brief, plaintiffs in error refer to a number of resolutions *proposed by* Local Unions, as if they were mere local resolutions. All resolutions in the Record proposed by Local Unions to the National Conventions **were in fact passed and adopted by the Convention** and were usually referred to the Executive Committee for action, as will appear by an inspection of the Record.

In President Mitchell's annual report to the 1905 Miners' Convention, he said:—

> "For many years special efforts have been made and enormous sums of money have been expended to organize the miners of West Virginia." (569.)

Although, in these Joint Conferences, in the discussion of competitive conditions, West Virginia formed the chief topic, as being the nearest and the largest non-union field, the debates show clearly that both operators and miners had in mind the other competitive districts

and that they realized fully the importance, for their protection, of keeping the miners and operators of the West and Southwest in their organization.

Thus in 1906 a movement was set on foot to admit the miners and operators from the Southwest into the Joint Convention held in that year. In discussing this proposal Mr. W. B. Wilson, the Miners' Secretary-Treasurer, thus explained the competitive relation which existed between the Central Competitive Field and the Southwest, including Arkansas:—

> "Mr. Robbins has stated that this proposition comes up in every convention. It is true it comes up in every convention, but it has come up in every convention because it is right, and no proposition is ever settled until it is settled right If I understand the principle upon which this movement is based, it is to bring into the joint conference those operators and those miners whose competitive business is closely related to each other; and in asking that the operators and miners of the Southwestern Districts be admitted to this conference, we are simply carrying out that principle. The coal mined in Western Pennsylvania comes in immediate and direct competition with Ohio; that mined in Ohio, as well as that in Pennsylvania comes in competition with Indiana and Illinois; that mined in Illinois comes in competition with Iowa; that mined in Iowa comes in competition with Missouri; and coal mined in Missouri comes in competition with Kansas, Arkansas, and the Indian Territory. **They are all related to one another; they all are competitors with one another,** and it is but just and fair that each of these fields should have a representative in the Joint Conference that sets a base for the prices of the ensuing year. This is the first conference that is held. Whatever wages are agreed upon here, whether it is an increase in wages, a decrease in wages, improved conditions or otherwise, it sets the

pace for other districts, and these other districts have no voice in saying what that price shall be." (571.)

In this same 1906 Joint Conference the Operators offered an amendment to the Miners' proposition, which the miners, however, refused to accept, as follows:—

"That because of the failure in this Interstate Movement to change the conditions of a ten-hour day in the unorganized fields as agreed to in the Chicago Convention, that we return to a ten-hour day." (572.)

Mr. Chapman (Ohio Operator):—

"If you gentlemen on that side of the house will provide means by which you can stop the competition from West Virginia, from Kentucky, and from Tennessee coming into the City of Indianapolis and into Ohio Cities and taking the trade of the Indiana and Ohio Miners, then there would be some consistency in this thing. But there is no remedy proposed. This competition is going on and it will continue to go on. And if the Operators have to pay higher prices for the production of their coal in these States it means the closing, the shutting up, the destroying of the value of many of the properties." (574.)

In the Miners' Convention of 1906, the Scale Committee reporting through John P. White, then President of the Iowa District (No. 13) recommended that Districts 13, 14, 21, 24 and 25 be admitted to the Joint Conference, recognizing the competition relation which existed between the Central Competitive Field and those Districts, including the Southwest District 21 where plaintiffs' mines were located (574).

In the Miners' Convention of 1907 Delegate Green of Ohio, now the miners' Secretary-Treasurer, showed

clearly how strongly the miners realized the force of what the operators had been urging in the Joint Conventions:—

> "Now something must be done; **it is absolutely necessary to protect us against the competition that comes from the unorganized fields east of us.** I believe that a national movement would have induced West Virginia to become organized." (577.)

By a "national movement" Mr. Green of course meant a strike by the whole National Organization of Miners.

Again in the same convention Delegate Feehan, from Pennsylvania, said:—

> "The 30,000 organized miners in District No. 5 have as neighbors thousands upon thousands of unorganized miners in the Irwin field and the Connellsville region **who are a constant menace to our organization."** (578.)

Delegate O'Connor also said:—

> "Four years ago sixty per cent. of all the steam coal and practically all the domestic coal used in the city of Evansville, Mt. Vernon and for the southern trade was mined by non-union men. Through the action of that convention, and **through our effort last year, we have the non-union coal practically shut out of Indiana.** There is only one firm on Main Street in Evansville that is using non-union coal, and that is a cigar factory." (1146.)

In the Joint Convention of 1908, Mr. Francis Feehan, a leading miner from Pennsylvania, who was one of the principal witnesses at the trial for the defense in this case, said:—

> **"I am very desirous of lending all of my efforts to prevent, if possible, the production of non-union coal.** I know that it has been my policy as an officer

of the organization, to try if possible to agree along with the operators who have entered into a contract with us and are dealing as business men should do, and if I had any fighting to do I would want to fight the fellow that was unfair and who was taking advantage. We feel that this should be done." (580.)

In President Mitchell's farewell address to the Miners in 1908 he thus emphasized the menace to the miners' movement presented by the existence of unorganized miners in districts competitive with those which had recognized the Union and were subject to the increased cost of production which resulted from Union conditions:—

"The strength of your Union is not in the best organized districts. Unfortunately, and I say it regretfully, its strength is its least strongly organized fields. You cannot be permanently safe, you cannot rest in security until West Virginia, the Irwin Field, the Connellsville and the Meyersdale regions of Pennsylvania are organized. You men of the Mountains of the West are not secure until south Colorado is organized. It may cost money, it may cost sacrifice, but, gentlemen, sleep not until those men and those districts are enrolled in your Union. (Applause.)" (580.)

In the Miners' Convention of 1909, Delegate Haggarty, speaking of the necessity of organizing West Virginia and Meyersdale, said:—

"Those fields are in direct competition with us. The money of this organization should be spent in the non-union districts in order to protect the districts where an organization has been established, and wage contracts made." (582.)

Delegate Farley also said, apropos of the recent failure of the Alabama strike:—

"Something will have to be done in Alabama sooner or later if Kentucky and Tennessee are to be

protected, because if Alabama goes down so will all the States south of the Ohio River." (583.)

In the Joint Convention of 1910, Mr. Maurer, an Ohio operator, made an instructive summary of the history of the relation of the parties since 1898 and of the conditions which in 1910 forced the operators to insist on a reduction in wages. In the course of it he said:—

"The chief evil was the fact that districts which did not recognize the United Mine Workers and had no agreements with them produced coal much more cheaply than those districts which sustained contractual relations with that organization. Some of the more important factors influencing these conditions were different methods of producing coal, varying costs of mining, different hours of labor, different sized screens, not mentioning various other elements. * * * In additon to the advance in the price of mining and the other important concessions enumerated, the action of this convention had an effect of the most far-reaching and salutary character, not alone for the mine workers but for the entire labor world in the recognition of eight hours constituting a day's labor, this being the first recognition of the eight-hour day by any large body of employers in the United States. The granting of the eight-hour day by the operators, after making these numerous other important concessions, was **with the distinct understanding and explicit promise of the miners to give to the operators of the four contracting States adequate protection against the competition of the unorganized fields.** From year to year they have been called upon to fulfill that promise. The operators, parties to that agreement at the time of its execution felt that it was absolutely necessary to the safety of their investments that they be protected from the encroachments upon them by their competitors of the unorganized fields.

* * * * * *

The operators of the district here represented are willing and ready to pay as high price to their labor as is paid by the operators of districts producing coal entering into competition with them. We view this situation now actually confronting both the operators and the miners as most critical indeed. If there be any merit in the claim of mutuality of the interest, it is incumbent upon both operators and miners to meet these conditions each sharing the responsibility for the result. Our interests must be protected if our employes are to find work; and in order to protect those interests and to give that employment, we feel that this is the time for an agreement based upon a recognition of the actual conditions and wages paid in the States producing coal entering into competition with us.

"Finally, we ask for the fulfillment of the pledge of 1898 upon which we made to the miners so many important and costly concessions. Though that promise has not been kept, we have continued for twelve years to make additional concessions by increasing the mining price from 66 cents agreed upon at that time to 90 cents, and in other respects conceding demands without any compensating concessions upon the part of the miners, until we now find ourselves at the limit of financial safety. The operators can make no further concession. It is now, in our view, not only to the interests of the miners, but their duty as well to do their share to meet these conditions.

* * * * * *

"We believe this to be a true statement of facts, and therefore call upon you to relieve us as well as yourselves from the unfortunate situation in which we now find ourselves, **due to the failure of the miners' organization to keep the faith pledged at Chicago in 1898.**

"We, therefore, insist that your organization place

the districts parties to this agreement on the same relative basis as the unorganized districts with which we are compelled to compete." (583–587.)

In the same 1910 Joint Convention President Lewis of the Miners' Organization said, arguing for the unlimited Check-off:—

> "Our proposition is 'that there shall be no limit to the amount of deductions for the organization.' We mean by that that there shall be no restriction on the amount of deduction we ask from our wages to turn over to our organization. It is true that in some of the districts there is no limitation, but in other districts there is a limitation. And while I am not one of those people who believe in organizing West Virginia to close up their mines, I am one of those people who believe in organizing West Virginia in order that the operators of the Central Competitive Field as well as West Virginia operators can get better returns on their investments, and in order that we can get better returns for our labor. If we are unable to get the operators to co-operate, to get the West Virginia operators to come into this joint movement as was originally intended at Chicago the only other method we have is to spend our money to organize that State and enable the operators to do business." (588.)

At this Convention Mr. William Green, an Ohio miner, now the miners' Secretary-Treasurer, thus clearly acknowledged the obligation of the Chicago agreement:—

> **"Let me point to the fact that the United Mine Workers of America have diligently and aggressively attempted to carry out the promise made in Chicago in 1898; that they have done everything in their power to redeem any promise they may have made to organize West Virginia.** Since 1898 our organization has at various times spent hundreds of thousands of dollars trying to unionize West Virginia. We

have also sacrificed human life in the attempt to redeem that promise. In view of the fact that we have spent hundreds of thousands of dollars and that our organizers, our members who have gone there as missionaries in an attempt to redeem that promise have sacrificed their lives and their liberties, we should be given credit for what we have done. I want to ask the operators how much money they have spent and what they have done to aid us to organize West Virginia. Is the fact that we have spent hundreds of thousands of dollars appropriated from the small earnings of our people in the central Competitive Field, and the fact that we have sacrificed the liberty of some of our members any evidence that we have tried to redeem that promise? Does not that show that we have honestly, sincerely and diligently attempted to redeem it? I believe, gentlemen, that if the operators had done one-half as much as the miners have done, if they had even co-operated with us in what we have done, West Virginia would be organized and the operators and miners of that State would be here today participating in this joint movement." (589.)

Mr. Penna, an Indiana operator, said:—

"There are some facts that it is useless to attempt to ignore. The very purpose of the Union is to increase the price of labor, to reduce the hours of labor, and then when that is done in this meeting we go home and there are attempts made, and often enforced, that further increase the cost. That is the very purpose of unionism. It has no right to live on any other plane than that, or at least we have never discovered it. It has no object in existing that we know anything about except to increase wages and decrease hours of work, and it has been successful in doing it. It is also a fact that not more than one-half of the miners of the United States are unionized. Those who are not unionized work

more hours, perform more labor for less money and as a result throw on the market a cheap product. Those are the non-union men, those who are the men who are our mutual foes." (590.)

Mr. Chapman, an Ohio operator, thus referred to the 1898 agreement:—

"You made promises in 1898 that you have not kept. You may have tried to keep those promises, but you know what was said and what was done on the floor of the Convention in 1898. I was a participant in it, as I have been in the preceding interstate movement. You know what the understanding was, and you know that at every session of every convention that has been held from that time down to the present we have asked you to carry out and make good what you said you would do at that first conference. In my opinion the only way you can ever hope to succeed in putting the Union fields on a competitive basis in cost with the non-union fields, the only way you can give your people more work and the other fellows less is to reduce your wages to enable the operators to produce their coal at a cost that will enable them to take the trade. It can be done in no other way. You have tried the other process for twelve years and it has been a total failure; you are weaker now in the non-union fields than you ever were. They are producing more coal and increasing their output monthly and yearly, and it will only be a short time until the Ohio coal docks will be a thing of the past, the mines will be closed up and you without work in your own State." (591.)

Mr. Maurer of Ohio also said:—

"Keep one thing in mind, keep the facts staring you in the face that for two years your mines have laid idle while West Virginia non-union tonnage took

the markets that belonged to you and to us. We stand next to these markets. In order to maintain our markets we on this side invested our money in the great Northwest and built docks to keep the market for you. That market today is in jeopardy on account of the competition from West Virginia. Tell me, tell me in fairness, is our position not right? Considering the last two years' experiences, can you honestly ask for an advance in wages? (593.)

About the only excuse which the defendants sought, by the introduction of extracts from the Joint Conventions, to offer for their failure to fulfill their contract to organize West Virginia was the fact that certain of the operators in the Central Competitive Field (how many does not appear) had themselves opened mines in West Virginia. The reason for this was clearly stated to the Joint Convention of 1910 by Mr. Zerbe of Ohio:—

"A very considerable amount of censure and criticism has been put upon some operators who are here because of the fact that they have gone to West Virginia and found investments. I will remind the other side of the house that the men who have gone into Virginia are business men; they are engaged in the coal industry, and they bring the commodity from one State or another to furnish fuel for such contracts as they take. They have found by experience that you as an organized body are not treating them fairly where they are circumscribed in the production of this commodity. They find that you are putting upon them burdens in the organized fields that do not exist in the unorganized fields. By reason of the fact you cannot control in the production of the commodity, although we are willing to admit you have made an effort, their market is being taken from them or restricted or narrowed, and many of them in self-defense find it necessary, in order to carry out contracts and fulfill their obliga-

tions to those who take this commodity from them, to go to West Virginia and invest in properties there that they may continue a business for which they are obligated. I am not one who has done that, but I may be. They believe that at these intervals you will place their properties in the unionized sections in a position where they cannot operate them, and as a result they go to the unorganized fields and invest money and feel secure that under any conditions they can fulfill these obligations. The operators are not seeking to go there but you are driving them there by your attitude toward the people who have been your best friends." (593-4.)

In the 1910 Joint Convention, Secretary Perry of the miners said:—

"The price paid for mining in West Virginia is not the only cost of production. **Those men have bills to pay that you do not, and you know it. It is not necessary that I should mention what they are. As a result of the organization trying to organize that field there is an added cost to the production of those operators.** In my judgment, as far as the unorganized fields are concerned, if the miners are paid an advance in the organized fields, I do not believe it will be possible for the mines in West Virginia to operate and pay the present rate of wages." (594.)

To men like those assembled, familiar with the methods used by the Miners' Organization to "persuade" non-union operators to join the fold, it was unnecessary to explain more fully what these "added costs" might be.

Mr. Chapman, in this convention also alluded again to the necessity of the fulfillment of the 1898 agreement, if the miners were to expect the maintenance of the higher wages and lesser hours which they enforced:—

"Years ago we asked you, pleaded with you, to bring the non-union fields up to a scale of wages

that would enable us to pay you the scale you have asked for from time to time; and you promised to do it, but you have not done it and you have not kept the faith. **We would be willing to pay the scale today and make the advance if you would put those people on a level with us in the cost of production.** You know you cannot do it. You have made efforts to do it, but you are farther away from the goal now than you were in 1898 and you are getting farther away every day. You know you cannot enforce the scale of wages. In every district that you have attempted it you have practically lost out, and you are losing every day." (595.)

To this statement Mr. Green of the miners replied:—

"I do not propose to attempt to defend the non-union fields of West Virginia. I know, as do the other miners on this side, that the non-union product of West Virginia is a serious proposition. As evidence that we recognize that fact, out of the meager earnings of the men on this side we have contributed month after month and year after year, to try to organize that field **and bring them up to a competitive basis** with our friends on this side." (595).

The continuing impression on the miners of the operators' position is again shown in the miners' convention of 1910, in which Vice-President McCullough made the following statement:—

"The first principle and great need of our union is the organization of the non-union mine workers of this country. **So long as the great army of non-union men remain outside of the organization, they continue to be a menace and stand in the way of progress and advancement of the organized mine workers."** (605.)

A resolution proposed by a Local Union and **adopted by the Miners' Convention of 1911** shows the need felt by them to extend their strength in order to enable them to enforce their demand (1146):—

> "WHEREAS, Many strikes by the United Mine Workers of America have been inaugurated to obtain higher wages and better conditions of employment,
>
> "And WHEREAS, Many of those strikes have met with defeat, notwithstanding the justice of their cause, because of the fact that labor unions on the railroads, through lack of an understanding to lend their moral co-operation which every organization should give in time of conflict to each other, have aided the employers to defeat us in those strikes;
>
> "*Therefore, be it Resolved*, That the incoming International Executive Board be authorized to seek an affiliation with the seven different railroad organization, viz.: The **Engineers, Firemen, Conductors, Trainmen, Switchmen, Telegraphers and Maintenance of Way, so that in time of industrial conflict between employers and employees of any of the above named organizations, including the United Mine Workers of America, all may join together for the purpose of aiding each other in carrying their strikes to a successful conclusion.**"
>
> "The Committee recommended concurrence in the resolution.
>
> "DELEGATE FEEHAN:—I move we concur in the report of the Committee."
>
> "The motion to adopt the report of the Committee was carried."

An extract from President Lewis' report to this convention also shows clearly that the miners even then saw that the Sherman Anti-Trust Act would interfere with the ends which they sought to accomplish by the means which they had in mind.

"SHERMAN ANTI-TRUST LAW.

"We have in this country a law known as the Sherman Anti-Trust Law. Its alleged object is to destroy trusts and to prohibit combinations that are inimical to the interest of the people.

"We have no knowledge that the great industrial corporations have been limited in their authority to control certain commodities. There is no likelihood that the Standard Oil Company, the United States Steel Corporation, and other great industrial institutions, will be dissolved by the enforcement of the provisions of the Sherman Anti-Trust Law.

"This law, like others enacted for the alleged purpose of protecting the rights of the people, is in reality being used to deprive the wage earners of the rights to organize. We know that the Sherman anti-trust law, as well as many similar State laws, are being used to keep the mining industry from being elevated to a higher standard.

"In my opinion the Sherman Anti-Trust Law and every other law of similar character, should be either amended or repealed, and instead of attempting to regulate corporations and trusts in the manner provided by the Sherman law, the National and State goverments should enact laws providing for a method of taxation that would remove any incentive for large corporations to accumulate wealth by illegitimate methods.

"As laboring men, and especially as mine workers, we should lend every influence we possess to repeal those provisions of the Sherman law that deprive us of our right to organize and establish the object for which we are united. Now is the time to act as we may at any time, be made the victims of a law that was enacted to control trusts but which is being diverted to destroy organized labor." (1147.)

From the proceedings in the Joint Convention of 1912 it is apparent that the conditions still persisted which

had given rise to the previous discussions. The operators insisted that the miners could not expect higher wages and lessened hours, unless they fulfilled their agreement to bring up the cost of production to the operators in the competitive non-union States, and thus relieved the union operators of what the miners termed "unjust" competition, *i. e.*, competition by operators who did not recognize the Union.

Early in the proceedings in the 1912 Joint Convention Mr. Hayes (later the Miners' International President), said:—

> "Today there is a splendid sentiment among all the non-union operators of the South in favor of this organization. I want the operators to realize that this organization is doing everything in its power to limit unjust competition. We believe in **fair competition** between operators and I want to assure you that we are doing everything in our power to limit **unjust competition."** (1110.)

The operators' proposition propounded by Mr. Taylor, of Illinois (one of the witnesses for defendants in this case), to this Convention, contained the following:—

> "The experience of the last two years under the present scale of wages and the losses sustained by reason of the wide difference between the prices paid in this competitive field and the non-union fields with which the product of our mines enters into direct competition makes it imperative that some relief be given us.
>
> "Unless this situation is changed and some relief given, our tonnage will be still further reduced and our markets still further absorbed by these **non-union fields,** with a repetition of the financial losses for the next wage period that we have sustained during the present and a consequent loss of employment to the miners.
>
> "With this condition actually existing we have no recourse but to ask that the miners bear their

part of the burden, and to meet this condition, grant us a substantial reduction." (598.)

Mr. Penna of Ohio thus referred to the reasons why the non-union operators were able to take away their markets:—

"The mine workers of West Virginia either do not want to be unionized or the employers in West Virginia do not want them unionized, or both.

"I am not going to attempt to explain why the men of West Virginia do not want to be unionized. That has never been clear to me; I don't understand it; but I can understand why the employers do not want them organized; and one of the chief reasons is because they see and know from public and private sources how employers are treated in localities where the union is strong. And they properly conclude that it is cheaper by any method which they may see fit to adopt by all the methods which they may see fit to adopt, it is cheaper to adopt those methods and pay the bill than it is to submit to the unionizing of their properties. They are properly afraid of what might be the consequences. They will read the reports of this meeting. They have of other meetings just like it. They see where we have talked of a desire to unionize West Virginia for only one purpose, namely, to exclude them from the markets in order that we may replace their product with ours. And hence they lay back and conclude, 'We are going to take no chances. We have those markets and we are going to maintain them as long as we can and encroach as much farther as we may.' They see reports of meetings of this kind and of the miners' demands. They read of the continual strikes and disputes and turmoils and violations of contracts in districts that are unionized, and they conclude it is cheaper to remain non-union, that it is more profitable after paying all of their expenses, than it is to unionize." (603.)

Further on in the debate Mr. Penna again said:—

> "I believe every man in this side of the house is willing to give just as much as the business will permit, in view of our surroundings. Organize these Virginians and organize the Kentuckians, organize Central Pennsylvania and then move up together. Level up and then move, but don't keep moving the highest." (608.)

John P. White, the Miners' President said:—

> "We are as anxious to establish the organization in the West Virginia Fields and the other non-union fields as the gentlemen on the other side of the house are to have to do." (612.)

Mr. McDonald was even more emphatic in protesting as to the strenuous efforts which his fellow miners had been making to protect the Central Field against the inroads of non-union competition. He said:—

> **"We have had men go to jail. We expect that more of us will go to jail. The penitentiary doors have no terrors for us, as far as that is concerned. And if putting two or three hundred of our men in jail will organize West Virginia we will send two or three hundred down. The chances are we will have to get busy with that situation shortly."** (Page 1118.)

Does the foregoing extract tend to show, we ask, that the miners had, in their efforts to carry out their agreement, been restricting their activities to legal and law-abiding methods?

While most of the foregoing discussion related to West Virginia and fields other than Arkansas, the importance of such debate in the present proceedings lay not in the particular locality under discussion, but in the principle and motive which was thereby being instilled continuously into the minds of the union miners, not

only in the Central Field, but throughout the country, by the teachings of their officers and representatives.

It will be noted that through all these years practically the same men were continued in charge of the Union, enabling them to develop and make effective a definite plan and policy. They firmly instilled into the entire membership the basic thought that the presence of a non-union operation in competitive proximity to a union mine was a direct menace to the maintenance of the union in the latter, since the non-union operator, by reason of his less cost of production, could undersell the union operator in the competitive markets and thus force him, in view of loss of trade or bankruptcy, to stand out for the abandonment of union conditions.

This principle was obviously applicable not only to the organization of non-union fields, but in equal or even greater force to the retention of the Union in fields already conquered, for **if an existing outlying non-union field was a menace to its neighbors, the breaking away from the Union of an operator in the midst of Union competitors would clearly be an even greater menace.**

This condition was brought out by Mr. Walker, the President of the Illinois miners:—

> "The places that are nearest the non-union mines, of course, have got to be the ones really that are up against the strongest competition. They are the ones where the situation is the most serious—and I don't care whether you leave it as it is now, and we will say West Virginia and Kentucky are the worst places—if you will organize West Virginia and disorganize the fields that are organized now, the shoe will be simply put on the other foot. If you organize Kentucky and disorganize Indiana tomorrow morning the thing will be reversed and men from Kentucky can make the same argument you are making now. Until every mine is organized and a joint agreement reached covering them that is fair that will be true. There is the place the shoe is going to pinch the tightest." (613.)

During the course of the debate Mr. Chapman again referred to the Chicago agreement:—

> "When we met in Chicago in 1898 and re-established the interstate movement the competition from non-union fields was the element, gentlemen, that entered into negotiations in the adoption of the scale that was made there. It was agreed to by both sides, and the question also of the ability of the miner to earn a fair day's wages for the labor he performed entered into it. At that time the miners were receiving 56 cents per ton for producing coal. I made motions in that convention that increased the day wage scale.
>
> **"It was understood in that convention, although it was not placed in the agreement, that the miners of the competitive field of the four States were to bring the non-union fields up to the price paid for mining in those States, and unless they secured the adoption of an eight-hour day at the next convention the competitive field was to be relieved of these burdens.** That was not in the agreement. Unfortunately, gentlemen, the proceedings of that convention were not published. If they were published it would be found that the President of the United Mine Workers and the gentlemen who aided and assisted him in bringing about the results there, agreed that they should be relieved." (613–615.)

On page 28 of their brief plaintiffs in error refer to the above passage as showing that the Chicago agreement did not require the unionization of the non-union fields.

Such, however, is not its effect.

What Mr. Chapman evidently meant was that while the Chicago agreement specified that the miners would organize the non-union fields, it did not specifically provide that if they failed to do so within one year the operators in the four states were to be relieved of the eight hour day.

In President White's annual report to the Miners' Convention of 1912 he said, relative to the Colorado strike then in progress:—

> "The importance of maintaining the Union in District 15 (Colorado), and securing a thorough and complete organization of the entire district scarcely needs any argument. The miners of Montana, Wyoming **and the southwest realize its importance from a competitive standpoint."** (615.)

In an article in the United Mine Worker's Journal for September 26th, 1912, Adolph Germer, one of the paid organizers of the International Union, said, relative to the strike in West Virginia instituted shortly previous by the National Organization:—

> "West Virginia has always been the barrier to out progress, a dagger in the heart of the United Mine Workers of America, by its unorganized condition. **In every Interstate Joint Conference between the miner and the mine owners, the latter have raised West Virginia as their battle cry against our demands.** The vast amount of non-union coal that is mined for practically nothing in that State has made inroads in **the markets that rightfully belong to the central field** to such an extent that we have reached the limit of our progress in the way of higher wages and better conditions. The east must be brought up; and if there ever was a time to withdraw that dagger from our hearts and forever wipe out that cry of "cheap coal" from West Virginia, that time is now (615).

In an official statement in the Journal for February 20th, 1913, Vice-President (later President) Hayes said:—

> "We will spend every cent in our International treasury, collect a million dollars or more by assessment **and tie up every non-union mine in the country,**

if need be, in order to redress the wrongs of the West Virginia miners, and in saying this I express **not only my own view, but the views of President White and our entire Executive Board."** (1146.)

In his Annual Report to the Miners' Convention of 1914, held just prior to the Prairie Creek Strike, Vice-President Hayes said:—

"In compliance with the oft repeated desires of our members, we have, during the past two years, waged a vigorous campaign in the non-union fields. The organization of the non-union fields is one of our chief tasks and the culmination of the campaign we have started must and will result in the complete organization of the coal mining industry of the land. We must never rest content until this goal is achieved. Our chief hope of future preferment, better wages and better conditions depends upon our success in the organization of these fields. * * *

"With the indorsement of this Convention and with your expressed determination to support and sustain the action of your International Officers in this work, we propose to carry on this campaign with renewed vigor, and will never cease our activities until the last remnant of non-unionism in the mining fields is forever removed." (530–531.)

To the same convention President White said:—

"The production of coal in the non-union fields is increased because of the conditions we create in our well-organized fields; and then we make it doubly hard to go into these fields and organize them because we favor them with this increased production and they have taken our markets because they are on an unfair competitive basis." (620.)

On May 18th, 1914, addressing a Convention of District 21 at Fort Smith, while the Prairie Creek Strike was

still in progress President White said, relative to the Colorado strike then at its height:—

> "A great many of you men realize how much the organization of Colorado is to the progress of the Southwest. * * * We cannot surrender the strike in Colorado. You men in the Southwest will appreciate more than any other class of men the establishment of the union in Colorado and New Mexico, for with the fall of Colorado, New Mexico must fall in line." (620–621.) (1135–1144.)

The foregoing are merely a few of the many more similar extracts from the proceedings and official publications of the United Mine Workers, found in the Record in this case. They amply justified Judge Elliott in his conclusion, in denying defendants' motion to direct a verdict in favor of the National Organization. (345, 3179, 3180).

He thus summarized the foregoing evidence:—

> "There has been evidence produced tending to show concerted action on the part of the union miners of District Twenty-one with the union miners of the entire national organization and the heads of that organization, tending to demonstrate, in the judgment of the Court, the idea and motive entertained by the entire organization and all the members of it, that it was necessary, in order to protect the union workers in the fields already unionized, to unionize the non-union fields, as well as to hold all those which were already unionized.
>
> "In the opinion of the Court there is evidence tending to show that there runs a thread of universal conviction upon the part of all of the officers of the national organization, extending down to the officers and even the members of the lower organizations of the United Mine Workers of America, that the interests of the United Mine Workers (and that they should be in a position to enforce their demands,

absolutely), demanded the unionization of all fields and the prevention of non-union mined coal, and the prevention of the competition of non-union mined coal in the markets of the country with union mined coal." (3180.)

The evidence not only justified this opinion but showed conclusively that at the very beginning of the relations of the miners and the union operators, it was agreed between them that the continuance of these relations was conditioned on the miners protecting the operators against the competition of the lower-cost non-union mines; that practically every coal field competes, directly or indirectly, with every other, either, in the case of contiguous fields, by sending the coal to the same point of consumption (709, 710, 571, 2055–2056), or, in the case of those more remote from one another, by forcing the intermediate fields to expand their consumption points (711, 571, 2056); that the method contemplated by the parties in affording such protection was the imposition of union conditions on the non-union mines which would increase their cost of production and so prevent them from shipping their coal to markets other than that in their immediate vicinity; and **that for twenty years it had been instilled into the miners' organization, officers and privates, that their growth and prosperity as an organization, depended more than anything else, first, on keeping all the union operators who had so far signed up from breaking away from the union, and second, on unionizing the non-union fields.**

It was perfectly apparent to the union officers and members, in April, 1914, that if Bache should succeed in getting started non-union, and so decrease his cost of operation to the extent of 25c. per ton, he could at once not only undersell all the near operators in his immediate vicinity—Arkansas and Eastern Oklahoma, —but could expand his markets far beyond the points to which hitherto he had been able to ship, and so take the market from the union operators in Iowa, Missouri, Kansas, Illinois and other States who shipped to these common points of interstate competition.

2. Acts and Declarations of Officers and Members of the Union and their Sympathizers, Participating in the Destruction of Plaintiff's Business and Property, and Use of Union Funds thereof.

Having in mind the structure and powers of the Union and the motive and purpose on its part to prevent the production and shipment of non-union coal, we may now turn to the events which immediately preceded the destruction by defendants of plaintiffs' business and property in the spring and summer of 1914.

Early history of the companies.

Bache and Denman had started their Arkansas operations in about 1903, under union conditions, as members of the Southwestern Operators' Association, composed of practically all the union operators of Missouri, Kansas, Arkansas, Oklahoma and Texas (675).

These operations were under a closed shop contract with the United Mine Workers under which none but members of the United Mine Workers might be employed, the Union insisting wherever a non-union man was employed that he immediately join the union or else be discharged (673–674).

The Companies contrived to operate under such conditions until 1910, when an attempt was made to start the Mammoth Vein Mine open shop, with a part of the employes not members of the Union This attempt however was unsuccessful as the men became frightened at a union demonstration which occurred during the first day or two of the operation and quit (674).

After this unsuccessful attempt the operations were put back on a union basis, operating under the closed shop contract with the Union entered into by the Operators' Association on behalf of all its members.

As things, went, on, however, the cost of operation kept increasing faster than the price obtainab'e for the coal, so that by the end of 1913 Bache was face to face with the alternative of reducing his cost of production, or bankruptcy.

Reasons for higer cost of operation in closed shop mines.

The main source of the increased cost was the unreasonable exactions of the Union. High wages and the eight hour day were not objected to. The non-union operators in the vicinity paid the same or higher wages than the union mines (2052); they did not **require** the miners to work more than eight hours. The difference was that whereas in the open shop mines the ambitious men were permitted to work overtime and to do more than the minimum amount in the time they did work, in the union mines no miner was **permitted** by the union to work more than eight hours in any day and none were allowed to work on "idle" days when all were not working.

The witness King, who had operated both union and non-union, thus describing the principal reasons for the lesser cost of production in the non-union operation (pages 2050–2051):—

> "Q. Did you find it was more expensive to operate under a contract with the union or under non-union conditions?
>
> "A. Well, paying the same rate of wages, or the scale of wages that is paid by the union, I found in the first two years operating under the open shop plan, that I produced my coal 17 cents a ton cheaper than I did while operating with union labor.
>
> "Q. Now to what do you attribute that saving of 17 cents?
>
> "A. Well, I attributed it to being able to run my mine a greater number of days during the season, or during the year, than I could operate on account of the controversies and shut-downs with the pit committees, and so forth.
>
> "Q. In operating under non-union conditions was there any fixed number of hours that the men were required to work?
>
> "A. Well, it is just the same, eight hours constitute a day's labor under the contract I had with the union. Eight hours is all we work now. That constitutes a day's work now, but we allow our men,

—we have a very low vein of coal, it only runs from 32 inches to 36 inches and the men all complain if they can't make enough coal at one shooting, or if the shots fail at 4.00 o'clock, that then they have not enough coal to work the next day, **and we allow the men, if they want to, to go back in the mine after supper, or on idle days and prepare their coal.** They will go back in the mine and shoot the coal and load what cars they can get, and it enables them to load more coal the next day. I have something over 100 pit cars, and the miners will go in the mine and load up all of those empty cars and shoot down coal and pile it up and have it ready to load the next day when there are cars to load it into. And in that way it increased my tonnage and brought down the cost of production because there is a certain expense I am put to each and every day whether the mine operates or not."

King then went on to explain that the men were paid for the extra time either by the ton or by the hour, the rate of wages paid by him **being higher than the union scale exacted in the region** (page 2052).

It was conditions of this kind (see Bache, 678–682, 718–719; Hilling, 2301) which did not materially benefit the men but which seriously hurt the operator, which increased the cost of production in the union mines at least 20% above that in an open shop mine (Bache, 682; Hilling, 2301).

The local union officers, in order to maintain their prestige with their constituents, were continually raising point after point and controversy after controversy, until finally conditions became unbearable (678–682, 719.)

Determinati no to start open shop.

After investigating the relative conditions in the two classes of operations, visiting open shop mines in the neighborhood, and receiving a report from his superintendent strongly recommending the course (717), Bache determined that his only salvation was to attempt open shop, in

spite of the fact that his previous experience and knowledge of the Union led him to believe that he would have trouble with them.

At this time Bache held a membership in the Operators Association on behalf of three of the operating companies, the Coronado Coal Company, the Prairie Creek Coal Mining Company and the Mammoth Vein Coal Company.

While it is true that this association had a contract with the union running to July 31, 1914, this agreement had been and was being so frequently broken by the union in connection with the Bache-Denman Companies as to give then the right to withdraw from it at will. (678–682, 718–719).

The Mammoth Vein Coal *Mining* Company, however, (all the stock of which was owned by the Mammoth Vein Coal Company), was not a member of the Operators Association (689–690), and so not a party to the contract with the Union.

It was also a foreign (West Virginia) corporation and would thus be able to apply for an injunction in the Federal Courts in case of trouble with the union. As the local officers and judiciary were so thoroughly union in sympathy as to make it impossible to expect adequate protection from them (see *infra*, pages 79, 81, 86 and 87-88 of this Brief) this was an important consideration.

A contract was entered into by the Mammoth Vein Coal Mining Company to operate the properties of the Prairie Creek Coal Mining Company and the Mammoth Vein Coal Company (682–683) and Bache withdrew from the Operators Association on behalf of the three companies which he represented in it, which companies had paid no dues to the Association after January, 1914 (689).

Preparations to start open shop.

On March 28th the Prairie Creek and Mammoth Vein Mines closed down as union mines (685) and preparations were made to start open shop.

These consisted principally in preparations to prevent damage to persons and property by the Union miners, which was expected not only by Bache but by the employees engaged by him (683–684, 1364).

All removable inflammable material around the mine was taken away, a wire rope was stretched around the enclosure, notices were posted warning all but employees off the premises, and electric lights were placed around (684–686, 1789–1790).

Bache also engaged four men to act as guards, arming them, but instructing them carefully not to use their weapons except in defense of life (686, 1204, 1353, 1363).

Employees for the open shop operation were also employed as fast as they could be secured, beginning with about a dozen.

No discrimination against Union men.

In the selection of these men, no discrimination was made between members or former members of the United Mine Workers and non-members. The Union men were told "that we would be glad to have them come to work and to stay at work." (Bache, 2331).

A number of the original employees were Union men or former members. Sylsberry (1202) probably later lost his life on that account. Hobson, Nixon and Hallowell were advertised as "scabs" by the Union and Sylsberry and Sam Brown were expelled for working for the company (2465, 2399, 2467).

This was a strike and not a lock-out.

During the trial defendants sought to have it appear that this was a lockout and not a strike. This contention, however, was absurd. Indeed, it was frequently called a strike in defendant's own official reports and publications (1462, 2391, 1928, 2396, 2436, 2468, 2470, 2648), and also during the trial by defendant's own President under examination by his own counsel (1637, see also 2661).

The Company had no difficulty in securing men to work so long as they were protected from the assaults of the unionists (727–729).

Hoisting coal the signal for trouble.

Throughout the whole trouble there were never any active demonstrations, or serious outbreaks at the mines while the company was merely making preparations, pumping out the mines, and getting their organization into working conditions. **It was when they began to hoist coal for shipment to market that the trouble began** (see Caldwell, 1369–1370; Cheek, 1435; Suttles, 1475; Moore, 1561).

Events Immediately Preceding the Riot of April 6th.

The formal opening of the mines on an open-shop basis was scheduled for Saturday, April 4th, and the employees began arriving at the mine on that day or a day or two before.

On Friday, April 3, a few of the Union men congregated around the mine, one of these being Clint Burris (1205) who afterwards proved to be one of the principal participants in the union activities.

There was no disturbance however, on Friday.

Events on Saturday, April 4th.

On Saturday, April 4, there was also considerable congregation of miners around the property (1205, 1206), Burris making an unsuccessful attempt to get inside the enclosure, ostensibly to visit some of the employees (1206, 1208).

Slankard's visit to the mines.

On this day also James Slankard made a visit to the mines. Slankard was a local constable at Hartford and was also a prominent committeeman in Local Union No. 1530 at Hartford (2383). He was one of the prime movers in the later disturbances, his position as a local peace officer giving him a useful status, in that, while passing as keeper of the peace, he could engineer the riots in a more effective manner.

On Saturday Slankard came to the enclosure and there met Mr. Bache and Barnes (1206–1207), who was chief of the guards. They told him of the instructions which had been given to the guards not to start any disturbances and not to use their weapons except in protection of their lives (1201, 1212, 687–688).

Slankard promised to co-operate with Bache in keeping the peace (1208).

Events on Sunday.

On Sunday there was a larger crowd of Union men around the mines, and there were some minor disturbances (1209), including rock throwing toward the houses where the employees lived (1210), calling "scabs," &c. (1353–1354, 1790), Burris being a prominent figure in the crowd.

Barnes telephoned for Slankard, who came out and after the matter was explained to him, he told Barnes that the

miners had no business coming out there on Sunday, when there was nothing doing, so they finally went away (1211).

No cause for subsequent arrest of Barnes and Bailey.

There was absolutely no evidence that on this Sunday, either Barnes or Bailey were implicated in any altercation or disturbance with Clint Burris or with any other person, which might have formed the basis for their subsequent arrest on the charge of disturbing the peace (1213, 1353).

Intimidation of Argo.

One of the men who had been employed by Bache for some time prior to April and who stayed on when the mine opened non-union was W. H. Argo.

A few days before April 6 he was approached by Speck Reed, a member of the Union who had previously worked at Mammoth Vein No. 1. Reed asked Argo if the Company was going to run open shop, and told him "That if they did it was going to be like it was at Denning, if they did, they would not last longer than Pat stayed in the army." (1187, 1191).

Intimidation of McLaughlin.

One of the men who had been employed to go down and help guard the mines was S. P. McLaughlin, who had been recommended to Bache by the chief of the police at Fort Smith (1169).

He arrived at the mines on Sunday, the 4th, where he was met by Clint Burris, the latter having known him when McLaughlin was night jailer at Fort Smith, and Burris was in jail there (1167).

Burris asked him if he was there to guard, and told him he was too good to guard scabs. The crowd then gathered around, including Burris and Bill Johnson and other union men, who told him that he had better leave, and that if he stayed there he would get hurt (1167).

He told them that he was going back on Monday, but they urged him to go at once (1167–1168).

On Monday morning they met him again and repeated the warning, telling him that the Company should not operate the mines under any consideration unless they signed up (1168). He left and went back to Fort Smith (1168).

Intimidation of Thurman Looper.

On Sunday, April 5th, Thurman Looper, another company employee, was visited by Manick, Burris, Howard

and Johnson, all prominent local Union members, and told that there was to be a very large meeting the next day; that they were going to stop the work that the company was doing and that they were "expecting to have trouble." Looper quit the same night (2351–2352).

Meeting at Hartford.

On Sunday, April 5th, a meeting of Union miners was held at Hartford, evidently preparatory to the riot of April 6, at which a telegram was read (Tyler, 1579–1580).

There was also a discussion in Hartford of the coming demonstration at Prairie Creek (W. F. Meeks, 1720; Hamilton, 2569).

Closing of stores.

Union leaders went around Hartford to various storekeepers and insisted that they close their stores on Monday and go out to Prairie Creek for the demonstration (Womack, 1453, 1454, 1455; Tyler, 1579, 1580, 1581; W. F. Meeks, 1721; Cole, 1750–1751).

McNamara.

One of the principal union men who thus visited the Hartford merchants was James McNamara. He was Financial Secretary of Local No. 1526 at Hartford (1724, 2450), and check weighman at No. 4 Central (1742–1743) and with Slankard was the Field Leader of the miners in this entire affair (Cole, 1750, 1752). He was one of the eleven Union "members and representatives" who pled guilty to conspiracy to violate the laws of the United States in disobeying the Court's injunction, and served two years in the penitentiary therefor.

Since Hartford was composed practically entirely of union miners on whom the merchants depended for their livelihood, they felt that, in self protection, they must do as the miners required (Womack, 1453, 1454, 1455; Meeks, 1722).

Closing of Union mines.

On April 6, the day of the Prairie Creek Riot, all the union mines in the vicinity of Prairie Creek, employing many hundred Union miners, were shut down through lack of men. The men simply did not appear in the morning (E. Bohannon, 1421; Boring, 1742; Beaty, 1747; Castle, 1826; Van Hecke, 1829). No reason was ever given for this by the men, and it is, in itself, conclusive proof of a previous agreement on their part among them-

selves to be away and doing something **all together.** What they did will shortly appear.

Warning of trouble.

Early in the morning of Monday April 6, some men came out to the mine and asked if they were not going to shut down (Looper, 1153). One of them told Argo there was a crowd coming from Huntington to tear down the tipple (1184). A local peace officer also appeared and told Barnes that something was going to happen in the afternoon (1214).

Arrest of Barnes and Bailey.

Early in the morning of April 6, Slankard and Baker (another Hartford Deputy Sheriff) came out to the mines with a warrant, sworn out by Clint Burris, charging Barnes and Bailey with disturbing the peace. Slankard arrested Barnes and Bailey and started to take them to Hartford in a buggy which they had brought for the purpose, but the Company put up a cash bond of $300 for them and they were thus permitted to remain on the property (Barnes, 1213–1214; Bailey, 1354–1356).

The evident purpose of the Union in thus arresting Barnes and Bailey was to get them away from the property, before the crowd came out later in the morning.

The Riot of April 6th.

Gathering of the crowd

The principal towns in the neighborhood of the Prairie Creek mine were Huntington, with a population of about 2500 (1412), four miles east of Prairie Creek; Hartford with a population of about 2500 (1453), two miles southeast of Prairie Creek, and Midland with a population of about 1000, three miles north of Prairie Creek.

All the inhabitants of Hartford, Huntington and Midland were miners or dependent upon miners for their livelihood (Kissinger, 1878; Degen, 1412–1413).

A little before noon three crowds appeared, one coming from Hartford, one from Midland, and a third from Huntington, the latter being preceded by a band (Looper, 1153); the total crowd finally amounting to between 1200 and 1500 persons (1197, 1215).

Meeting at Local Union Hall.

About a quarter of a mile above the company office at Prairie Creek Mine No. 4 there was situated the Union

Hall and Headquarters of the Prairie Creek Local Union, also known and referred to in the testimony as the Schoolhouse (Schell, 1674; M. W. Weston, 1853).

On the arrival of the crowd they held a meeting in front of the Local Union Hall (Looper, 1153; Ritchie, 1161; Argo, 1184; Sylsberry, 1197; Barnes, 1215; Bailey, 1356; Caldwell, 1367, 1371, Mrs. Degen, 1406, 1410–1411; Cheek, 1426; Mrs. Levi Brown, 1514; W. F. Weeks, 1721; Hackett, 1791).

Speeches by Slankard and McNamara.

The meeting lasted about an hour or two (1215, 1791). Speeches were made by Slankard and McNamara (Meeks, 1721; Hamilton, 2569) and also by Miss Freda Hogan, the daughter of a prominent local socialist ("United Mine Workers Journal" of April 16, Record, page 2385) the purport of which was that they should "persuade" the non-union men to quit work (1721) or to join them in the Union (2385).

Slankard's visit to the office.

Slankard then went down to the office within the wire enclosure and asked Mr. Cameron, the superintendent, if he would see a committee. Meanwhile the crowd came down to the rope and proceeded to heckle Barnes and Bailey who were on guard just inside (1185, 1721–1722).

Committee to see the Superintendent.

The committee consisted of Slankard, John Manick, President of Local No. 1565 at Midland (2380) and Ves Howard, a prominent member of the same Local (1184).

As they were going into the office Barnes, who anticipated trouble as the crowd was pressing into the enclosure, asked Slankard and Deputy Constable Baker, who was also present, to suppress the disturbance and help them get the crowd out of the enclosure (1218). Slankard and the other two committeemen, however, went on into into the office where they had a conference with Cameron the purport of which was that the miners wanted the company to abandon its attempt to run non-union, and close the mine down (Argo, 1185). Howard told Cameron that they didn't want this to be a repetition of Colorado (Hackett, 1791, 1802) which in view of

what all parties knew as to the recent Colorado riots, was a most effective threat.*

Meanwhile, the crowd had broken over the ropes, and attacked Barnes and Bailey, who made no resistance (Looper, 1154; Barnes, 1216–1221; Bailey, 1356–1357, 1363; Cheek, 1427; Meeks, 1723; Cole, 1751; Hackett, 1792; Thrasher, 1839, 1840, 1844). Beating up of Barnes and Bailey.

They were beaten up so badly that both had to be sent to the hospital at Fort Smith (Dr. Cooper, 1855).

Although there were present at least two constables (Slankard and Baker) and Sell Soddard (the Town Marshall of Hartford) (1155), no attempt whatever was made by them to prevent the assault or to apprehend the offenders.

Identified in the crowd which attacked Barnes and Bailey were the following:—

John Bumpas, Don Fitzgerald, W. P. Fitzgerald, Clint Burris, Fred Wooten, John Wooten, Jim Lee, Edward Davenport, Frank Canfelt, John Graham, Sid Shaw, Howard Shaw, J. W. Howard, A. S. Howard, John Manick, Tom Rodden, Claude Carruth, Andy Kyle, J. H. Rodden, Marion Hulsey, Madge Hulsey, George Manick, Jim Slankard (Hackett, 1795–1796); Charley Clayborn, Everett Wooten, Jim Walker, Sandy Robinson, Dick Blair, Jesse Griffin, U. S. Buzan, Gus Buzan, Leo Bock, Jim Meeks, (Thrasher, 1839–1840); Fred Todenhauffer, H. A. Brooks, Joe Overman, George Hamilton, Joe Nick (Argo, 1185) (1456); Mike Cisco (1157); Will Shrum (1453) Fred Moton (1457). Identified participants.

These men were either members of the union or union sympathizers. Most of them are named as individual defendants in this case.

As a result of this occurrence Cameron determined that it was useless and unwise to resist further. He telephoned Bache at Fort Smith and told him of conditions and was instructed to quit and to come to Fort Smith (688). Unconditio surrender.

* What the miners termed the Ludlow Massacre did not occur until April 18th, so that Howard's reference was clearly not to alleged attacks by the non-union employees or guards

Slankard's speech to the crowd.

Slankard, on hearing this, went out and made a speech to the crowd (1186, 1198), telling them that the company had capitulated (1724, 1427). The crowd then invaded the property and took possession (1427, 1793), the whistle was tied down so as to emit a continuous blast (1194, 1368, 1428, 1793), and the miners hoisted a large American flag on the tipple alongside of which was placed a banner bearing the words:—

Union banner on the tipple.

"This is a Union Man's Country" (1368, 1529, 1751, 1793, 2390; see also 1165).

It was this flag which John P. White, President of the National Association, referred to in his report of this occurrence to his Executive Board at its next meeting on May 4th as the **"Flag of the United Mine Workers"** (2390; see *infra*, pages 127–128 hereof).

Union committee to intimidate employees.

Hackett, the Assistant Superintendent, and Argo, the bookkeeper, with a few others, stayed in the office, Cameron being afraid to go out (1797, 1802).

Meanwhile a committee from the local Union (1156), consisting of Manick and Howard, had been around to see a number of the employees, asking them if they "had the nerve to come out and face the crowd" (Looper, 1156; Ritchie, 1161; Cheek, 1427). Needless to state, none of them had the nerve (1161, 1427).

Running off company foreman.

After Slankard's speech to the crowd and the hoisting of the Union Banner, Slankard, with Goddard (the Hartford Town Marshall, 1155) and a number of others came into the boiler room and told Looper, the foreman in charge, to pull the fires and shut the mine down (1155, 1198).

Beating up of Sylaberry and Looper.

Looper instructed Elmer Searles, the fireman, to draw the fires, but just then the crowd surged into the boiler room and Searles, who, as Secretary-Treasurer of one of the Local Unions (No. 567, at Hartford), was the particular subject of the miners' wrath, ran out the back, pursued by the crowd throwing rocks at him (1155,

1156, 1161, 1162, 1186, 1199, 1457) and "everything they could get hold of" (1367).

Looper and Sylsberry then pulled the fires themselves and as they finished the crowd attacked them and beat them up (Looper, 1157; Sylsberry, 1198; Cheek, 1428; Meeks, 1723–1724), so that they had to go to the Fort Smith Hospital (Dr. Cooper, 1855).

Later a union miner, Ed Baker, showed one of the plaintiff's witnesses, Goacher, a pair of bloody shoes, which he said he had used in kicking Looper's teeth out (1456). The teeth themselves were proudly exhibited by Jim Meeks, another union miner (Weston, 1870); see also White (1385).

Sylsberry was kicked and beaten by two union miners, Newman and Burris, whom he identified (1198; see also Cheek, 1428).

Dr. Chambers.

A Hartford physician, Dr. Chambers, one of the defendants, was present in the crowd, but refused to treat Looper's wounds, stating that he "would not dress a God damn scab" (1158).

Failure by local peace officers present to make arrests.

Slankard and Goddard, both of whom were present (1185), made no attempt to interfere or to bring the offenders to justice.

Looper subsequently sued Slankard, Mike Cisco, Burns, Dr. Chambers, Joe Overman, W. P. Fitzgerald, John Kiger, Tom Kiger, Chas. McCowen, Louis Fioretti, Vergil Strand, Pete Clements and John Bumpas for damages and recovered a verdict of $1250 which was affirmed by the Circuit Court of Appeals. We have quoted from the remarks of the Circuit Court of Appeals relative to this occurrence in another part of this brief (*infra*, page 148).

Injury to the mines.

As a result of this "demonstration" and "persuasion" on the part of the Union, the employees left the property, and the pumps no longer being operated, the mine was allowed to fill with water (1359, 1368).

There was also considerable injury to the goods of the employees (1358), and an attempt was made later in the day to burn the tipple, the fire being fortunately extinguished by a thunder shower (1516, 1517, 1531).

Such few of the employees as remained in the afternoon were visited by committees of the Local Unions and "persuaded" to leave (Ritchie, 1162, 1164; Caldwell, 1368; Mrs. Barnes, 1317; Levi Brown, 1529–1530; Mrs. Levi Brown, 1515–1516).

Subsequently members of the union distinctly admitted to the witnesses that the whole affair had been engineered by the Union, and acknowledged their participation in it (Goacher, 1456).

Events between April 6th and July 17th.

Intimidation of Argo.

On the following day, April 7, Argo, who lived with his wife a short distance from the mines, was visited by a crowd of ten or fifteen miners, headed by W. J. Gwyn, the Secretary-Treasurer of the Frogtown Local Union No. 2110, and warned that unless he and his wife moved they would be killed (Mrs. Argo, 1183; Argo, 1190, 1195). Gwyn said that they had nothing against him personally, and warned him as a friend (1183,1190). Mr. and Mrs. Argo thereupon left and never returned (1183).

Beating up of Argo.

Two weeks later, on April 19th, when Argo was passing through Hartford he was severely beaten up by McNamara (1188–1189, 1719, 1751), the Financial Secretary of Local No. 1526 (2450), whom he had never known before (1189). The same Dr. Chambers who had refused to treat Looper on the day of the riot, declined to dress his wounds (1189). Chambers later told him that the sole cause of the affair was his previous connection with the non-union operation (1189).

After April 6th the mines were idle for ten days and filled up with water.

Temporary injunction.

On April 8th a temporary injunction was obtained from Judge Trieber, the defendants being the participants in the riot, most of whom were Union men, and on April 15th some men were obtained to go down and start the pumps to clear it and prepare for further operation (John Shaleen, recalled, 3152, 3156).

From that date up to July 17th, when the properties were finally destroyed, there was a continual series of in-

sults, threats and intimidations by the Union men of the company's employees, all accompanied by profane references to "scabs."

Many of these occurrences were on unspecified dates. Such were the beating up of the company blacksmith (Langford, 1323), the frequent assaults on the men in coming or going from Fort Smith (Langford, 1223), the threat by Slankard, Burris and Sandy Robinson to Cheek and Dunlap to "fix the scabs" (Dunlap, 1519–1520), the attempted intimidation of J. C. Bohannon at Burma (1382, end of June or first part of July), the rocking of Epperson, Jackson and Bohannon at Midland (1382, "some time in June"), the threat by McLachlin, the District 21 Board Member in charge of the strike, against United States Marshal Holt as he was summoning witnesses to the injunction suit, which was heard May 4–8 (White, 1384), the demonstration at the Montreal crossing (White, 1384–5), insults on the train when going to Fort Smith to testify in the injunction suit (Cheek, 1432), trouble on the train coming to Prairie Creek with new employees (Allison, 1256), the threat against Sylsberry by Charley Ferguson and Jim Lee, Union miners (Goacher, 1458), statements that the mine would not be allowed to operate with scab labor (Johnson, 1510), the beating up at Hartford of a prospective employee asking the way to Fort Smith by Roy Smith, a union miner (Meeks, 1725), Smith being one of the two Union men who during this trial beat up one of plaintiff's witnesses outside Judge Elliott's Court Room and took away from him the papers which he was subpoenaed to produce (3163). Intimidations and assaults on unspecified dates.

The dates of a number of similar occurrences were fixed by the witnesses.

On April 28th, J. A. Murray, a company employee, when returning to No. 4 mine accompanied by J. S. Moore (the mine foreman) was held up by Union men at the switch leading to the mines, and told that they were not to go in there; that there was a bunch of "God damn scabs" in there whom they were "going to crucify." They were turned back to Midland followed by the crowd (Murray, 1373, 1375). Intimidation of J. A. Murray.

Sometime prior to May 1 an investigation of the trouble was undertaken by J. C. Clary, the State Commissioner of Labor, whom the plaintiffs contended was so thoroughly prejudiced in favor of the union as to be practically a party to the conspiracy.

Clary subpoenas.

On May 1, Clary issued subpoenas to all the employees at the Bache mines, including even those who had not been at the mine on April 6, to go at once to Hartford to testify before him. He would not permit them to go a few at a time, leaving a part to protect the property, but insisted that they must all go at once (J. Shaleen, 1779–1780).

The men all felt that if they went to Hartford their lives would be in danger. Shaleen, the foreman in charge, got in communication with Mr. Cameron, who ordered him to draw the fires and come up to Fort Smith at once, which he did, taking all the men employed there, and leaving the mine to fill with water (Sylsberry, 1201, Bailey, 1359, J. Shaleen, 1779–1780).

The mines remained closed again until May 11, undoing all the work toward unwatering the mines which had been accomplished, between April 16 and May 1.

The Union thus effectually postponed the hoisting of coal.

The hearing on the permanent injunction was held before Judge Youmans at Fort Smith on May 4 to May 8.

Hearing on permanent injunction.

These injunction proceedings as well as the contempt proceedings which followed were all conducted by the Union, which paid all the expenses for counsel, witnesses and costs, amounting to upwards of $10,000 (2468; see *infra* pp. 158–160 hereof).

During this hearing there were several minor encounters between the Union men and the company employees (Allison, 1256–1257).

Charlie Robinson's threat to Caldwell.

On the 5th of May, during the injunction hearing, Charlie Robinson, one of the defendants in the injunction proceedings, and a Local Union Secretary (1369) told Caldwell, one of the company employees who was there as a witness, **that there would be no danger until the com-**

pany began hoisting coal, but after that the place would be torn up and he had better not be there. Robinson said:—

> "You had better be down in Mexico in the army, you will be safer than in Prairie Creek" * * * **"you know what they done in Colorado, the same thing will be done here"** (Caldwell, 1369–1370).

On May 16 C. H. Langford, the superintendent who later succeeded Cameron after the latter's resignation, was taking 7 or 8 new employees down to the mine.

Langford train trouble May 16th.

A union miner named Stanfield began to abuse the men, particularly one Tipton, calling them "scabs" and brought a number of other union men into the car to join in the abuse (Langford, 1318, 1319–1320, Johnson, 1501–1502).

When the party got off at Prairie Creek there were 75 or 100 Unionists there to greet them, a number of rocks were thrown at the party, one of which narrowing missed Langford. As they were leaving, a little girl named Johnson shouted at Tipton something about "scab pen," and Tipton merely answered "Yah, yah." Langford told him to "shut up" (1319–1320).

Bailey was not in Langford's party but was at the mine a mile or so away (Langford, 1320, Bailey, 1358).

Arrest of Bailey on false charge.

On May 18, however, Bailey was arrested and taken to Midland on the charge of insulting a girl on the highway, the charge being based on the above incident and the informant being the Johnson girls' brother, Charlie or Blue Johnson, an active member of the Union, who had a grudge against Bailey for some previous activity on Bailey's part in besting the Union down in Johnson County, in the course of which Pete Stewart, President of District 21 had been beaten up at the hands of Bailey and some other non-union employees (Langford, 1319–1320, 1327, 1329; Shaleen, 3153–3154; Miss Johnson, 2591).

Failure to prosecute him.

Bailey was fined $100 and costs at Midland, and an appeal was taken to Greenwood, from where a change of

venue was obtained to Fort Smith, where the case was dropped by the Union (1358).

Rock throwing at Midland May 18th.

On May 18, Charlie Cheek, Levi Brown and Will Bohannon, company employees, went down to Midland in the company's wagon to get supplies. As they started back, Moro Colo and Foster Bean, two Union Men, with a crowd of other union members and sympathizers, began throwing rocks at them

Constable Philpot of Midland, City Marshal Madge Hulsey, and deputy City Marshal Marion Hulsey were standing nearby, within sight of the occurrence.

As the Union men began to gather up the rocks the officers walked around behind the store out of sight (Tharel, 1709). When the rocks began flying, some of the supplies got loose on the wagon, and the Company men got down to fasten them up. Bohannon had a gun on the wagon and took it down and placed it up against the wheel. At this one of the Union men shouted, "they have got guns" whereupon the officers came out again and arrested the three Company employees on the charge of carrying concealed weapons.

Failure by local peace officers to make arrests.

Neither Colo, Bean nor any of the other Union rock throwers were arrested (J. W. Baker, 1423, Cheek, 1429, Womack, 1450, Levi Brown, 1533–1534, Tharel, 1708–1709, Bohannon, 1825).

The three Company employees were taken to the Mayor's office where they were told by their captors that the latter "Would try their shoes that night and make us leave town; they would kick us out of town" (Brown, 1535).

The next day they were tried and fined $100 each for disturbing the peace and brandishing guns (1535), the facts showing, however, adsolutely no violation of Section 1739 of Kirby & Castle's Digest.

Prosecution by Paul Little.

The prosecution was conducted by Paul Little, County District Attorney, to whom reference will hereafter be made. In opening the case, he stated in open court that there "was not much to the case; that the union had laid their shovels down and the scabs had taken

them up and taken bread and meat out of the union men's wives' and children's mouths" (Bohannon, 1825).

During the week May 18–23 there was held at Fort Smith a Convention of the District Branch No. 21 of the U. M. W. A., which was attended by delegates from all the Locals as well as by International President John P. White, and the District Officers. Later on more will be said of the proceedings of this Convention, it being merely mentioned here to point out its chronological relation to the local events.

Convention of District 21 at Fort Smith May 18th–23d.

On May 23d, J. A. Murray was told by Dan Wilcox, President of the Local Union at Adamson, Oklahoma, that the miners of Oklahoma were going to "march down and help out at Prairie Creek and clean those scabs out that was working there" (1374).

Threat to Murray May 23d.

On May 25th Pete Stewart, President of District 21, accompanied by Paul Little, District Attorney, made a speech in front of Magee's drug store at Midland, in which he stated that the non-union employees, including particularly Bailey (who had beaten him up previously at Jamestown, 1496), were insulting their women and girls (1312), on the public highway (1711); that they were going to have another Colorado down there (1494); that any man that wanted a gun could get one next week (1711); that it was no secret that everybody went armed and that everybody who wanted arms could get them (1313); that he was taking the responsibility on hinself with regard to the guns, and he would advise everybody else to carry one (1711); that he would furnish all the guns they needed (1494); that the scabs would be put out of there (1457), and that he would die before he would see No. 4 Mine run on an open shop basis (1496, 1711).

Pete Stewart's speech at Midland May 25th.

Plaintiffs were able to prove that between the middle of June and the 1st of July, Fred Holt, Secretary-Treasurer of District 21, purchased from the Remington Arms Company and from dealers at Hartford and Fort Smith 27 high-power auto-loading rifles, 28 old Springfield rifles, and many thousand cartridges for the same,

Purchase of arms and ammunition by Union June 15th–July 1st.

which were paid for by Union checks counter-signed by Pete Stewart, and were shipped to John Mastell and Oscar Layton, a prominent Local Union member, who later was sentenced to six months in jail on his own plea of guilty on account of this very occurrence (2482–2483, 1594–1625, 1651–1659, 1686–1690, 1690–1697, 1835–1837).

How many more guns and rifles were acquired by the Union and distributed to the Union men for use in the battle, it is impossible to estimate. Certainly there were several hundred.

Pete Setwart's statement to Marshal Johnson.

Sometime about the latter part of May, Pete Stewart, President of District 21, got into conversation on the train between Greenwood and Hartford with United States Deputy Marshal J. O. Johnson, deputized by Marshal Mayes to investigate the Prairie Creek trouble. Stewart told him who he was and Johnson said something about an injunction. Stewart then said:

"Damn the injunction."

> **" 'Damn the injunction, the national government is against us but the people are with us, and we are going to win.'** I says: 'The Company is going to operate their mines with non-union labor ain't they?' 'No,' he says, 'we do not aim to let them do it.' I said 'how would he prevent it?' I meant by that, the people, the Union. * * * He says: 'we have got a way, **we are not going to let them dig coal,—the scabs.'** He would not tell me the way. All his talk was in the way to refuse non-union laborers" (J. O. Johnson, 1499–1500).

Stewart was very bitter against open-shop labor (1500).

On June 1, the Federal Department of Justice sent 50 or 60 Marshals down to the property to enforce the injunction, but in a few days these were all withdrawn, in spite of the Company's protest, except three (Schell, 1669).

Boycott of the 50 marshals.

The Marshals were boycotted at the stores in the village and also were unable to get lodgings except in the company's own house (Schell, 1680; Chitwood, 1821–1822; W. J. Smith, 1759; Atkinson, 1764).

On June 10 several of the Company employees went down to Prairie Creek station to get some feed and groceries. A number of the union men came around cursing them and calling them "scabs" among whom were Clint Burris, Jim Slankard and Sandy Robinson, the latter of whom cut open 2 bags of feed with his pocket knife (Cheek, 1430; Dunlap, 1320; Clarence Schaleen, 1735). Cutting feed at Station June 10th.

On June 15, as Langford was bringing down several new employees, they were attacked on the train as it reached Prairie Creek by a number of Union miners who endeavored to prevent them from getting off, threatening them, calling them "scabs," assaulting one of them. Sandy Robinson, John Manick and Clint Burris were in the crowd (Langford, 1321–1322; J. Parrish, 1564–1565; Ed. Parrish, 1571; Schell, 1669–1670). Langford train trouble June 15th.

On the same day there was trouble on another train when Allison, a mine foreman, was bringing some other men down to the mines. They were searched, threatened, called vile names, and rocked by a number of union men and sympathizers, among whom, in addition to Slankard, Burris, Manick and Robinson, some other union men were identified (Allison, 1254–1256; Meeks, 1430–1431; E. Doughit, 1538; M. Doughit, 1543; Harmon, 1701; J. Shaleen, 1780; C. Shaleen, 1785). Allison trouble same day.

About June 30, Schell, one of the deputy marshals, was down at Prairie Creek station with Holt, another of the marshals. They met Bob Graham and Clint Burris on the platform and noticed a sign which had been printed up there on which was written "Remember Ludlow." Threat to Marshal Schell June 30th.

Holt asked the Union men if they figured on having any trouble and Graham said: "Yes, it will be just like Ludlow and you had better bury those God Damn rifles or" (not quoted here by reason of vile language used) (Schell, 1671).

About a week or ten days before the battle of July 17, two of the guards were sent out to guard the high-tension wire, which furnished the power to the Prairie Creek Mines and which had been short circuited or cut several times before (Cheek, 1431, 1434; Dunlap, 1520; Scowl, Cutting power wires.

1864), and where it was expected that the union men would attempt to cut it again.

Arrest of Birkell.

Several men came along and began firing at the company's camp (Hamilton, 1832). When the two guards reached the pole they found a bunch of men under it, one of whom fired at them (Dunlap, 1520, 1525). Another was captured by the guards and taken into camp (Langford, 1323, 1331; Cheek, 1431, 1434, 1439; Dunlap, 1520, 1525; Moore, 1559–1560; Schell, 1671, 1681; Chitwood, 1821–1822; Hamilton, 1832).

There was considerable promiscuous shooting into the Company property from time to time (Langford, 1325; E. Dougherty, 1298–1299).

Intimidation and boycott of persons dealing with the company.

The attempted intimidations were not confined to the employees of the Company, but were extended to those who supplied it with provisions and materials or who offered to do any casual work for it.

Thus the witness Goacher was threatened with reprisals by the Union if he continued to haul water for the Company (1458–1459).

Buck Tharel also, the one provision dealer in Midland who would sell to the Company, was threatened by identified union men (Goacher, 1457, 1458; Tharel, 1709). A few days after the battle Tharel's store was burned down (Tharel, 1710; W. J. Smith, 1759). There was also a meeting of Union men and sympathizers at Huntington to get concerted union action in an attempt to force the Huntington Light Company to shut off Bache's power supply (Scowl, 1864, see also Minute Book of Local 1526, page 226, Record, page 2449).

Union Preparations for the Battle of July 17th.

Trouble threatened when ready to hoist coal.

For some days prior to July 17th there was a distinct feeling at the mines that serious trouble was imminent (E. Thomas, 1279; E. Dougherty, 1283–1284; Cheek 1445; Mrs. Perry, 1477, 1478; Eustis, 1749; Chitwood, 1823).

As we have heretofore noted, **the Miners' object and plan did not contemplate any drastic action until the**

Company was ready to ship coal. It was this and this only that they were determined at all cost to prevent (Caldwell, 1369–1370).

On April 6th, the day of the Riot, the Company was ready to ship coal. This was effectually prevented for a month or more by driving off all the men and allowing the mines to fill with water.

The men came back on April 15th and by May 1st a good deal of the water had been pumped out. The Clary subpoenas of May 1st, however, again drove the men away and the mine filled up again. It was not until early in July that the water was all pumped out and coal began to be hoisted. On July 17th, the day of the Battle, several cars were on the scales billed for shipment to points in other states, **one at least of which interstate cars was destroyed** (Cheek 1435; S. T. Brown, 1707, Pigg, 1932; Peake, 2039–2040: Moore, 1561, 2062–2063; Finley, 2503, 3406).

Withdrawal of the Marshals.

Another circumstance which probably precipitated the final action by the Union was the withdrawal by the Government of the three United States Marshals who had been left on the property to enforce the injunction after the 50 or 60 had been taken away in June. This final withdrawal occurred on July 15th and was given wide publicity in the local press (Langford, 1326; J. Shaleen, 1784).

Threat to Shaleen.

On this day, July 15, John Shaleen, a company foreman, while waiting for a train at Prairie Creek Station, heard Pete Graham say to some other Union miners "We are going to lose a lot of our boys over this, but we can't let any scabs stay in this country" (3156).

Warning of impending attack.

The knowledge of the impending attack on the mines was not confined to the employees. It was general throughout the county (Kissinger, 1878). In Hartford it was daily expected that an attack would be made on Prairie Creek No. 4 to "run off the scabs" (McConnell, 1590; Allen, 1697; Trammel, 1575; M. W. Weston, 1855; Harp, 1898).

Warning to Dougherty.

A few days before the battle Tom McDonald, a Union miner of Hartford, and a member of Local No. 1912 (2448) made several visits to the mines in order to get out certain employees whom he had formerly known back in Tennessee.

"He said he knowed there was going to be hell played over there and he knowed me and my son. He used to play with my son Andrew and wrestle around at Briceville, Tennessee, and he didn't want us to be in that skirmish, that he expected every one to be killed" (E. Dougherty, 1293–1294, see also A. Dougherty, 1309).

Warning to Bob Bly.

Three or four days before the battle Bob Bly, a company employee, was visited by his two brothers-in-law, Jim Meeks and Arthur Cooper, union miners, who told him that they were looking for trouble "most any time —right away," and "for me to go home." This he wisely did (Bly, 1173–1174).

Warning to Upton.

On the Monday (July 13) before the battle, Upton, a company employee who was returning to the mines, was warned at Fort Smith by August Smith, a union miner, and a Lodge-fellow of Upton, that it was "just a few days before we are going to clean that place;" he was advised to stay away (Upton, 1177–1178). This warning was repeated to Upton by others as he neared his destination (Upton, 1178). When Upton still persisted in going on, the union men paid the fare of Upton and another employee to a point beyond the mines, put them up at a hotel for the night and sent them back home next day (Upton, 1179).

Warning to Weston.

In June or July, M. W. Weston was planing to operate a small union mine just across the creek from the Bache properties. He did not start his operation for a month or six weeks after he had planned, for which he gave the following explanation:—

> "A The Union people there came to me and informed me I better not do it, there was going to have trouble and we might be in the road down there, we had loaded down there on the same track.

"Q. And they said you might be in the road?

"A Might be in the road when they had this trouble and not to do it.

"Q Did they refer to any trouble that the Bache-Denman Company had had'?

"A No, sir; not at this time they didn't but simply would say that these here scabs or 'scalys' had come there and took that work and they was not going to stand for it and generally they would finish up by wanting to know what kind of work I was going to do, if I was working fair or was going to work like Bache and Denman and I would generally tell them that I didn't know anything about how Bache-Denman were working.

"Q. What did they say was going to happen over to the Bache-Denman Mines?

"A. I don't know what, **they generally coutioned me to be on the look out that this was going to come off and it was supposed to come off every day after about two or three weeks and they would notify me in the morning to kind of be on the look out and they would let us know in time to get our teams and men away but they didn't want to hurt us.** I was going to work union men there and they always cautioned me to be sure to do that I knew what had happened to Bache Denman that was referring to the whipping Looper and them fellows down there. Well, this went on that way day by day. Well, of course, I would hear it was going to happen to-night when the miners come out of the mine and then something would happen and then it was going to happen in the morning, just as the miners were getting ready down in the mine, that the (scabs) miners Bache and Denman miners" (M. W. Weston, 1847).

* * * "Well, I wasn't a bit afraid of them hurting me if they knew who it was or any of my family" (1852). * * *

"They promised to let us know when it came off so as to get us out of the way" (1853).

Frank Scofield the Secretary-Treasurer of the Prairie Creek Local, was the principal Union official who gave this warning (1854).

The first time Weston met Scofield after the battle, Scofield apologized for not giving more adequate warning of the actual occurrence, stating that some of his men started the affair sooner than he had expected and "he had no show to go down and he supposed we would hear it anyway" (1854–1855).

"We had been there about three or four weeks waiting for this war to be settled for it was supposed to come off every day and night for about three weeks, I think" (1855).

As a matter of fact, Weston himself was out of town on the night of July 16, but his family was warned away and got out of danger by the union men early in the morning of the battle (J. Weston, 1857, 1859–1860; Mack Weston, 1867, 1868, 1871).

McLachlin's telephone to Judge Youmans.

In view of this occurrence it is instructive to note that on the evening of July 16, Wm. McLachlin, the District Board member in charge of the Prairie Creek strike, himself called Judge Youmans on the telephone from Hartford and asked the Judge to instruct the United States Marshals to protect the community from the outrages of the company employees lest the latter precipitate a popular outbreak (Judge Youmans, 1815).

If McLachlin had looked out the window of the Hotel from where he was telephoning, he could have seen, as the honest old proprietor of the hotel saw, his fellow Unionists running down the street crying out "the scabs are coming" (McConnell, 1591), and could have seen companies and brigades of them marching armed to Prairie Creek to destroy the mines.

McLachlin did not call on the sheriff as Judge Youmans told him to do (1815, 2735), although he knew that the sheriff and all other local officers were only too willing to do the bidding of the Union and would give instant relief if appealed to.

McLachlin's appeal to Judge Youmans was clearly

but a part of the well conceived scheme to prepare the Union alibi.

Warning to residents in the neighborhood.

Other residents of Frogtown, the village about half a mile from the Prairie Creek mines where many of the Union miners lived, were warned by Union men early in the morning of July 17th to move away out of danger (Rankin, 1765; S. T. Brown, 1700; Mrs. Degen, 1409; Stanley, 1551).

Emigration of families of the Union men.

Many of the defendants' witnesses frankly acknowledged that they had heard, some days before July 17th, that "there would be trouble." This was particularly the case with the families and friends of the ring-leaders. Thus the family of Will and Charlie (Blue) Johnson were sent early on the morning of July 17th, to a neighbors across the mountain (Elberta Johnson, 2588, 2590–2591; Mrs. Sam Dorman, 2602–2603). The family of John Manick was moved to Hartford on the 16th and stayed until the 18th (Mary Manick, 2614). Mrs. John Bumpas, wife of one of the defendants to the injunction suit who participated in the Riot of April 6th, and one of those against whom the Court below sustained the judgment obtained by Looper for assaulting him in the course thereof, was also moved across the mountain two or three miles from the scene of the battle (Mrs. Bumpas, 2640), a man having come to the gate on the night of the 16th and warned them that there "was going to be trouble" (Bumpas, 2683–2687). Several days before the battle Cliff Sloan moved his family to Howe, Okla., where they remained until after it was over (Sloan, 2666). Ed. Ables, the father of a Frogtown Union miner (2669), the Hobbs family (two sons Union miners of Frogtown) moved to Hartford on the afternoon of the 16th (Mrs. Hobbs, 2694), as did Mrs. Ashley, daughter of another Frogtown unionist (2697), and the family of Pete Graham (Mrs. Graham, 2710). The family of Peter Nickolle journeyed to Hartford and back every night from Monday until Friday, when the

battle finally came off (2716) (see also Haley, 2795; Evans, 2812).

Visit to storekeepers.

As on April 6th, merchants of Hartford were visited by Committees of the Union and requested to close their stores on July 17th and go out to take part in the battle (Harp, 1897, 1898, 1899; Womack, 1451, 1453, 1454 1455; Tharel, 1710).

Arrangements were made by the Union to get all the Union miners from the surrounding country to come over to help (Green, 1585; Goacher, 1458; Degen, 1409; W. F. Meeks, 1730).

Purchase of arms and ammunition.

Thorough preparations had been made by the Union to secure and distribute arms and ammunition to the Union men. 55 high-power rifles and 8830 rounds of ammunition were shown to have been bought by Holt and Stewart **and paid for with Union checks** signed by Holt as Treasurer and countersigned by Stewart as President (Reierson, 1594; Hill, 1651; Laws, 1686; Morgan, 1690, 1691, 1695; Hayden, 1835–1837). How much more the Union bought and distributed among its members it is impossible to tell.

Plaintiffs-in-error seek to minimize the importance of this testimony by referring to the testimony of one of the District Board members to the effect that Stewart frequently signed blank checks (2747). **Stewart himself, however, was in the court room during practically the entire trial and neither he nor Holt were called as witnesses by the defendants** (3148–3149).

The circumstances under which these rifles were purchased by Holt showed clearly that he knew he was doing wrong. He insisted that the jobber have the shipments made direct from the factory in unmarked boxes (Morgan, 1691–1692–1693). The Remington Arms Co. representative clearly recognized also that the guns were being acquired for no proper purpose. His letter to the home office is instructive (1607):—

"Remington Arms—Union Metallic Cartridge Co.

"MC ALESTER, OKLA., June 19, 1914.

"Rem.—U. M. C. Co., 299 Broadway, New York, N. Y.

"GENTLEMEN:—You will notice on my expense account for this week that I have entered entertainment expense while at headquarters on Wed. and Saturday but this expense was absolutely necessary inasmuch as I was compelled to entertain the Superintendent of the Federation of Labor of this district. The Auto. Rifles sold this week were for the Federation of Labor and this transaction must be kept absolutely secret as in case these operators in this coal field were to find that I had sold rifles to the miners they would cut me off their list when it came time to stock their stores.

"It is only a question of time until this section will be under martial law and would suggest that you acknowledge receipt of no orders in this territory for at least sixty days. **Will see that both sides are supplied with Rem. U. M. C. products but do not want to be caught in the deal.**

"Yours very truly,

"H. B. HILL."

As was shown conclusively by the order which accompanied the letter and by the testimony of the witnesses (see Morgan, 1690–1695), the "Federation of Labor" was the United Mine Workers of America, and its "Superintendent," whom Hill entertained, was Fred Holt, its Secretary-Treasurer (1614, 1615).

Defendants called a witness who testified that he saw some boxes which had been returned to McAlester before the battle, marked firearms **but he did not see any guns in the boxes** (3016).

McNamara himself spent a considerable part of the night of July 16th securing arms and ammunition from

Collection of arms.

the local stores (W. F. Meeks, 1726–1727–1728, 1733; Cole, 1752; Allen, 1698; Forrester, 1403–1404; Kissinger, 1875–1876). The miners about Huntingdon were "coming from all directions, going to town to hunt ammunition to get ready for the fight" (Degen, 1409).

Telephone messages were received at Hartford requesting men and ammunition to go out to No. 4 (Meeks, 1730).

The witness Goacher testified that he hired a mule to three Union men to work in a buggy with a horse "to go around and see some of the miners, to see if they would carry guns out" (1458).

On the morning of July 17th ammunition was carried out from Midland in sacks on horseback (W. J. Smith, 1758; M. Smith, 1761), and later was identified being distributed to the Union men in the thick of the battle (E. Thomas, 1268; Mrs. Perry, 1480–1481; W. Thomas, 1337; see also Parrish, 1566).

Frogtown propaganda.

One of the important items in the preparation for July 17th on the part of the Union consisted in the elaborate propaganda carried on by them for several weeks which finally had the apparent effect of convincing certain members of the community that the non-union employees and guards in the Bache property were really a menace to the neighborhood.

On Sunday night, July 12th, this propaganda was brought to a climax by Slankard, who, with another Union man named Cluck, crawled up a ravine adjoining Frogtown, the village where most of the Prairie Creek Union miners lived, and fired off a number of shots; "we knowed it had to be done to protect ourselves" (Goacher, 1460).

Although Slankard was present at the trial, he was not called to deny this (3149).

Cluck denied it saying that he had a sore hand at the time which would not have enabled him to hold a gun. In spite of this, however, he seems to have been able to write to the United Mine Workers Journal a day or two

later and tell of the shooting, blaming it on the "scabs". (Rec. 1462; see *infra* p. 000 of this Brief.)

During the next few days this incident was magnified (Allison, 1260; Langford, 1325; White, 1388–1389; Cheek, 1442, 1444), so that not only in Frogtown but also in Huntingdon (Degen, 1408, 1412) and Hartford (McLachlin, 2740), there were persistent rumors that the scabs were coming over to shoot up the town. The miners even went so far as to place guards not only in Frogtown (Haley, 2796) but in Hartford itself (McLachlin, 2740) to protect the 2500 people there against the few dozen men at the Bache mines (White, 1388–1389; Meeks, 1733), who were really afraid for their lives if they left the property (E. Thomas, 1279; E. Dougherty, 1283–4), and who could not be induced to go to Hartford even under the express protection of the local police force (Sylsberry, 1291; Bailey, 1359; J. Shaleen, 1779–1780).

The merchants of Hartford were not misled by the rumors and had no real fear of an attack by the "scabs" (Womack, 1453; Tyler, 1548; McConnell, 1591, 1592).

McConnell, the old hotelkeeper at Hartford, showed up the whole plot clearly (1591):—

> "Q. Now, about eight or nine o'clock before the battle, the night before the battle, state what occurred if anything, that you saw, with reference to any men rushing down the streets?
>
> "A. There was about a half dozen or more that were put out as guards that evening, and just a little bit after dark, I don't recollect just exactly the hour, but I had not gone to bed yet, but some of the guests had, there were about fifteen or twenty ran down the street toward the depot, and hollered, 'There goes some scabs,' and they run on down about the track, and there were two or three shots fired, and I heard them. I was right at the front door on the sidewalk, and it seemed like they were shooting promiscuously, just any way, and I said to some of them, 'You had better be careful, you

will kill somebody unexpectedly the first thing you know.'

"Q. Mr. McConnell, you as a business man of Hartford and a resident there and a property owner there, did you have any apprehension lest twenty-five or thirty of the non-union men at Prairie Creek were coming there and going to burn up Hartford?

"A. **No, sir; I didn't hear anything of it, or didn't feel fearful of anything of the kind."**

There was no attempt on the part of the defense to refute McConnell's testimony.

The testimony clearly showed that the company men did not do the shooting at Frogtown (1181, 1222, 1260, 1278–9, 1284, 1298, 1325, 1360, 1432–3, 1441, 1521, 1557, 1566, 1672, 1677, 1679, 1705, 1732, 1750, 1815), but they expected to be accused of it (Cheek, 1444).

On the night of July 16th the streets of Hartford, Midland and Huntingdon were unusually crowded, there being many men with guns (W. F. Meeks, 1726; Cole, 1752; Womack, 1454).

Placing of Union forces on night of July 16th.

The witness P. Baker testified that on the night of July 16th, he was returning from Fort Smith to his home at Hartford. As he approached Frogtown he was stopped several times by crowds of men with guns, one of whom he recognized as Sandy Robinson. They gave him a "password" to get by. As he went toward Hartford the road was lined with men. He was again stopped by a large crowd, one of whom got on the running board, raised his hat up and recognized him, "gave the order to open ranks, and they separated and I drove on through" (1778).

This man he recognized as James McNamara, Financial Secretary of Local 1526 (2450), afterward sentenced on his own plea of guilty to two years in the penitentiary as the ring-leader of the miners (1779, 2482).

Union meetings prior to the battle.

Three meetings were held at Hartford preparatory to the battle. The first was at the Eagle's Hall, which was attended by Pete Stewart, President of District 21, Mell Dodd, Paul Little, the county prosecutor, and by the

Editor of the Hartford "Observer," a rabidly pro-Union newspaper. The exact date is not stated.

Dodd made a speech about "sooner or later we would be getting justice." Stewart's speech.

Stewart, too, spoke, referring to the union men and their wives and children being run over by the scabs and shot and chased around, stating that if the Company men were to be allowed to carry guns and ammunition, he would see that his men were protected by letting them have the same, and that the union people were not going to be treated as in Colorado (W. F. Meeks, 1725–1726, 1735).

On July 16th, two meetings of miners were held at Hartford, one at the Bolen pond, at which Slankard was the sole speaker, the object of the meeting "to get those non-union men out of No. 4," and the gist of his speech being that "he would lead the way to put a stop to those men coming into town and causing trouble shooting" (Simmons, 1909). Meeting at Bolen Pond.

Throughout the entire trial there was offered absolutely no substantial evidence that any one of the company employees had ever been found shooting at anyone or making any real disturbance, either in their own camp or out of it, nor were any of them ever apprehended for or even charged with such by the assiduous local authorities, who were so eager to arrest them on false and silly charges.

On one occasion one of the men accidentally discharged a gun in the company property, injuring one of his fellows. This was promptly investigated by Paul Little, the District Prosecutor, accompanied by Pete Stewart, President of District 21 (Dunlap, 1522, 1523).

A third preparatory meeting of miners at Hartford was held at the Ball Park, the men having been called out of the mines at noon to attend it. McNamara presided. "He said we knew the nature of the meeting; we all understood what we were going there for when we went" (York, 1882). Meeting at the ball park.

"Every one seemed to understand it, because they McNamara's "warm" Union speech.

had been talking among themselves about the trouble, and of course it was understood that they were going to do what was best to do. I suppose that some of the union men wanted to go down there and do what they did, later on" (York, 1883).

A "warm" speech was made by McNamara:—

> "Q. I wish you would explain if you can—I don't want to lead you—the substance of Mr. McNamara's speech, as near as you can give it, explaining what you mean by it being a warm speech.
>
> "A. **He is a pretty warm member of the United Mine Workers, is all I can tell you. He believes his way good and strong"** (Simmons, 1911).

Other speeches.

Speeches were also made by Charlie Robinson (Sandy's father and Secretary of the Prairie Creek Local, Caldwell, 1369–1370), who was "quite radical"; "I would judge that he wanted to go down there and clean up on them" (York, 1883, 1884).

Robinson's speech was "all the same substance" with McNamara's, "that is, put them to flight."

> "He meant to clean them up; that is what he meant.
>
> "Q. Clean up whom?
>
> "A. What he called the scabs". (Harp, 1900).

Stewart's phone call to disperse.

After the meeting had progressed thus far, McNamara was called to the telephone, and on his return reported that Pete Stewart had given orders that the meeting should be dispersed at once (Stroupe, 1895); that there were some men in jail at that time at Fort Smith and the authorities were only waiting to get some more evidence against the men (York, 1884).

The meeting then dispersed, **not that the activities planned were to be in any way modified, but solely to prevent the Federal authorities from securing more evidence against the Union in connection with the contempt proceedings then pending.**

Another meeting was held at Huntingdon for the purpose of endeavoring, by means of a boycott, to induce the Huntingdon Power Company to shut off the power and light at the Bache mines (Scowl, 1865–1866; see also resolution of Local No. 1526, Record, page 2449). Meeting at Huntingdon.

Finally, on the night of July 16th a Union meeting of several hundred men was held at Frogtown, the talk at which was "about going over there and getting them men out of that place. Q. What place was that? A. No. 4." (Francis, 1545, 1546.) Meeting at Frogtown.

No testimony was offered by the defense to dispute that these meetings were held or the purpose for which they were held.

On July 17th all the neighboring union mines were closed from lack of available men, **although the operators were all anxious to have them work** (E. P. Bohannon, 1421, Boring, 1743, Castel, 1826, Van Hecke, 1829, Sampson, 2570). Closing of Union mines.

The absolute unanimity of action on the part of these thousands of Union miners, in simultaneously quitting work without excuse or reason to their employers, is conclusive proof of a previous agreement among themselves to go on this day to Prairie Creek and do what they did there.

On July 17th they reported for duty, not to their employers who had a right to expect them, and not with their picks and shovels, **but to their Union, on the hills around Prairie Creek, with rifles and shotguns.**

Crowds of armed men were seen going to Prairie Creek from Hartford (Allen 1697, York, 1887, Womack, 1451, recognized Ernest Nein) from Midland (W. J. Smith, 1758, S. Smith, 1759, M. Smith, 1761), and Huntingdon, among whom McNamara was recognized (Allen, 1697), McNamara was also recognized returning with a gun later in the morning (Cole, 1752). Crowds of armed men.

The Battle of July 17th.

Cutting of electric wires.

About midnight on the night of the 16th all the lights at the mine went out (Allison, 1257, E. Dougherty, 1285, A. Dougherty, 1303, Suttles, 1464, Dunlap, 1522, S. Thomas, 1660, Epperson, 1715, Eustis, 1748). At the same time, "the whistles all around through Huntingdon, all the whistles you could hear was all blowing, and there was quite a disturbance throughout the country" (Schell, 1673).

4 A. M attack.

At about 4 A. M., several bunches of men came along the road (Suttles, 1465) from Huntingdon (Schell, 1673, Epperson, 1715-1716, S. Thomas, 1660), and fired about 100 shots into the Company's property (Allison, 1257, E. Thomas, 1263, A. Dougherty, 1303, Mrs. Perry, 1477, Dunlap, 1522, E. Dougherty, 1539, Harmon, 1702, J. J. Johnson, 1807, Westton, 1868), one of the shots knocking a window out of the office building and another going through the bib of the overalls of one of the men on guard (Suttles, 1465, W. Thomas, 1334, 1345-6).

Bud Eustis, the Company foreman, went out with two men and picked up 66 shells, Winchesters, 32s, and some shot gun shells (Eustis, 1749).

7 A. M. general attack.

Things were then comparatively quiet until after seven o'clock when the train arrived from Hartford (E. Dougherty, 1539).

The Company men then noticed unusual activity over in Frogtown, hand cars going in and out on the railroad track and boxes and other things which they did not recognize, being unloaded, "suggesting trouble" (Parrish, 1566).

They then saw a dozen or fifteen men armed with guns crossing the woods from Frogtown toward No. 3 tipple, "trying to conceal themselves by going from one tree to another" (Parrish, 1566).

These men shortly began shooting into the Company's camps and in a few minutes the firing started from all sides (Parrish, 1567).

Many of the witnesses described the shooting (Allison, 1257-8, E. Thomas, 1264-5, E. Dougherty, 1285-6, 1287,

1298-9, A. Dougherty, 1304, W. Thomas, 1334, 1347, Davis, 1376, 1380, Saunders, 1393, Suttles, 1465, Mrs. Perry, 1478, 1479, 1480, 1486, 1488, 1493, Dunlap, 1522, Levi Brown, 1531, S. Thomas, 1661, Schell, 1673-4-5, Allen, 1698, 1699, Harmon, 1703, Epperson, 1716-7, J. J. Johnson, 1808-9).

The miners had evidently surrounded the camp before they opened fire, as the shots came from every direction (Parrish, 1567), and it was impossible to estimate their number. There were several hundred men firing in on the camp (Allen, 1698, Meeks, 1414), and "the bullets bounced all around us" (Mrs. Perry, 1478, 1486).

Capture of No. 3.

The Union men soon captured No. 3 tipple, from which the Company men beat an early retreat (Parrish, 1567). The Union men put a case and a half of dynamite into the slope at No. 3 and "blew it to hell" (E. Dougherty, 1292) the concussion being heard for a great distance around (E. Thomas, 1279, E. Dougherty, 1286, A. Dougherty, 1305, W. Thomas, 1336, Meeks, 1415, Scheel, 1674, Simmons, 1906), sounding "like the whole earth was falling in" (Mrs. Perry, 1479). It was clearly felt in No. 4 shaft which was connected underground with the No. 3 slope (Parrish, 1568).

Description of the battle.

The battle which followed is also described fully by a number of other witnesses from many different points of observation (J. Meeks, 1413, Cole, 1752, Stroupe, 1890, Harp, 1906, M. W. Weston, 1848-9, J. Weston, 1856-7, Simmons, 1904). These latter witnesses although called by plaintiffs, were union men or sympathizers. None of them admitted their direct participation in the battle. None suggested the "intolerable conditions created by the company guards" as the reason for the attack.

For perhaps the fullest and most accurate description of the Battle, the Court is referred to the testimony of Sam Thomas (1659), E. Dougherty (1280), Levi Brown (1527), and Mrs. Perry (1476).

The Company men sought shelter behind the cars (Levi Brown, 1531), and replied to the Union fire as well as their scanty number would permit. Many of the women and

children were moved in between the boilers (Epperson, 1716-1717).

As the Union men "closed in" (S. T. Brown, 1700), a number of the Company men fled at once (Saunders, 1393-4, 1396, 1399, Suttles, 1466, 1467).

One of these, Saunders, ran into two Union men with guns who asked him how the Company was "fixed for fighting," if they had any guns and what kind, and "if they had any pits dug" (Saunders, 1395).

Before Suttles left he saw a man setting fire to a house between No. 3 and No. 4 (Suttles, 1465, 1466-1467).

Burning of buildings.

Those who remained, while still on the property or when leaving saw about everything inflammable burnt up by the invaders (E. Thomas, 1266, A. Dougherty, 1306, W. Thomas, 1337, 1344, E. Bohannan, 1421, Mrs. Perry, 1479, 1488, Parrish, 1568, Shell, 1674, 1675, Epperson, 1717, Eustis, 1750).

"Set the son-of-a-bitch on fire," "Burn her, burn her," Harmon heard the Union men shout as he left No. 4 at about noon "and by the time we were going out of the trees we saw the tipple afire clear to the bottom" (Harmon, 1703).

The witnesses other than the Company men also described many fires on the property during the day, both in the morning (Meeks, 1415; S. T. Brown, 1700), and later in the day after the Company men had all left.

Argo's house (Stroupe, 1893), Mammoth Vein Tipple and houses (Dalton, 1773; Stroupe, 1899; Harp, 1906), were burned to the ground, **as were also a number of loaded cars standing on the railroad track at No. 4 tipple (M. Weston, 1869).**

Burning of loaded cars.

One at least of these cars was already consigned by railroad bill of lading to Natchitoches, Louisiana (1932, 2039, 2062, 3406).

Weston also described vividly the scene on the next day, July 18, when John Manick, Clint Burris and number of other men burned up No. 4 power house, throwing tents, suitcases, bedding and everything they could get hold of on the fire (Mack Weston, 1869-1870-1871, see also M.

W. Weston, 1850). Frank Schofield, Secretary of the Prairie Creek local, told John Weston that he got shot in the leg during the fight (J. Weston, 1859).

Buster Moore's party.

Buster Moore, mine foreman, and some 30 other employees left about the noon, seeing smoke rising from No. 4 as they went away (Roberts, 1555; Moore, 1559; Epperson, 1717; Eustis, 1750).

Allison's party.

Dunlap and Bud Porter left about the same time (1522). Allison, with Schell and quite a few men left after Moore's party had gone.

As they got away, about 50 union men came out of the brush. Allison's crowd lied to them about their former connection with the mines, but the union men evidently did not believe them, and one said to one of the party, "You wanted a job and you came down here and you learned a lesson."

Allison endeavored to telephone at the house of a union man near the mines but was not permitted to do so (1259).

On the outskirts of Hackett they turned their guns over to Dr. King, and Schell had some difficulty in getting his back two days later (Allison, 1259; Schell, 1675, 1676).

Levi Brown.

Levi Brown with his wife and baby held up a shirt on the end of a stick and got out. They were later captured by a crowd of union men among whom he recognized Frank De Santo and Lloyd Clayburn.

One of the men punched him with a pump gun severely and finally cocked his gun to shoot him but Clayburn interfered, stopping him. They shot at him, however, as he went up the road with his wife and baby. He dodged in to the bushes, one bullet cutting a limb above his head and another striking a tree at his side (Levi Brown, 1532-1533; Saunders, 1400-1401).

As he passed the No. 3 slope he recognized John Manick, going with some burning brands in his hands toward a building that was not yet on fire (Levi Brown, 1533). John Manick was President of Local No. 1565 (2380).

G. A. Davis.

G. A. Davis was one of the last to leave, as he had hidden behind a pump in the blacksmith's shop, fixing himself up a breast work there to keep the bullets from hitting him.

"The bullets was coming through the shop mighty near like hail; and there was a bullet hit the pump and fell down right by my face" (Davis, 1376-1377).

About 1.30 seven men came into the blacksmith's shop with guns which they threw on him and made him crawl out. They told him they would not hurt him and asked where the rest had gone, and finally searched under the floor in the engine room.

"Q. What did they do then?

"A. Well, one of the fellows (and) taken some waste out of the coal car,—out of the oil box in the coal car and brung that waste up there and handed it to me and handed me a match. That was in the wash house in the corner of the shop we were at that time, and he said, 'You light that waste' and I started to strike the match and I broke the match off, and he didn't have any other match and he asked one of the other fellows if they had a match and one of the fellows handed him a match and he said it was all the match he had. And he grabbed the waste out of my hands and said, 'I will set it.' And he struck the match and set the waste and piled some old pit clothes on the waste, and the shop went up, it burned up" (Davis, 1378).

Later they took Davis over to the Union Hall, and on the way a man who had hold of him was shot in the hand by another union man who evidently took their crowd for company employees. When he reached there, he recognized Charlie Blackburn (1378, see also Meeks, 1416), a prominent union man whom the Unionists called Captain (1662).

While they were at the school house word came in that the United States Marshals were getting off the train at Midland and would be there in a few minutes. It was decided by the Union men to tell the Marshals "Just to hold their peace a little bit until they got through what

they were going to do, and they would give up to them" (Meeks, 1416).

Parrish brothers.

The Parrishes, Lee Harmon and Pat Malloy hid themselves in the brush until about 2 o'clock, when they came out and made their way toward Mansfield.

As they were leaving they heard shouting, whooping and shooting over toward the shaft and saw very large flames and smoke rise up.

After getting a short distance a man in a Ford came along and took them in, thinking they were union men, of which impression they did not undeceive him, "He said he would haul anybody but a damn scab, he didn't know who we were, he thought we had been over there to shoot up No. 4, he said he hauled four loads over there and guessed he had done his part, he took us on to town" (Harmon, 1704).

When they reached the station they sent their rifles to Fort Smith by express on the advice of the depot agent. "Who also assumed the same thing that we had been over there to help. I guess everybody from there had been over or went over there" (Harmon, 1704).

Beaten up by Union men at Mansfield.

Shortly afterwards, however, the four were found out as non-union men, and were attacked and severely beaten up by 12 or 15 men. They were rescued by the express agent (J. Parrish, 1569-1570; E. Parrish, 1571; Harmon, 1704).

They finally hired an automobile to take them to Fort Smith but the driver later lost his nerve and gave them their money back (Harmon, 1704-1705).

The Tennessee witnesses.

About a dozen of the Company's employees were miners from Tennessee, who had come on to work a short time before the battle. Three of these, Saunders, Suttles and Perry, left early in the fight. The rest of them, headed by Ewings Thomas, with the women and children, retreated shortly after the seven o'clock shooting began, back of a large bluff, where they were sheltered from the shooting (E. Thomas, 1265; E. Dougherty, 1286; A. Dougherty, 1304; William Thomas, 1335-1336; Mrs. Perry, 1479; J. J. Johnson, 1808).

Capture by Union men.

Here they stayed, with the exception of Johnson, for several hours. Johnson went back to the bunk-house to get some water and some coats, and while going was captured by a Union man to whom he disclosed the whereabouts of the Tennessee party (1809). This man soon released him and after going to the bunkhouse for his clothes and being fired on by the Union men (1809), he tied a towel around his head and went back to the bluff where he found his former captor, with another Union man, in charge of the Tennessee party.

While he had been gone the Union men had come armed with rifles to the party and threw their guns on them and made them surrender (E. Thomas, 1267; Mrs. Perry, 1480).

White handkerchiefs as Union emblem.

These men both had white handkerchiefs around their left arms, which was evidently a mark of distinction which had been adopted by the Union men to keep their men from being fired upon by their own side (E. Thomas, 1266-1267, 1269; E. Dougherty, 1288, 1291; A. Dougherty, 1308, 1310, 1305, 1306-1307; William Thomas, 1337; Mrs. Perry, 1479, 1480, 1491-1492). See also as to these white handkerchiefs, as a recognized Union emblem in Colorado in May, 1914, Record, page 643.

One of these captors was identified as H. M. Stroupe, a Union miner who was also a local preacher (E. Thomas, 1269; A. Dougherty, 1308, 1310; Mrs. Perry, 1491-1492).

"Headquarters."

The captors told them that they were going to take them to Headquarters, **which proved to be the Union Hall at Hartford** (E. Dougherty, 1288, 1291; A. Dougherty, 1305, 1306–1307).

As they were leaving, one of the captors fired a shot down into the camp (Mrs. Perry, 1488).

Passing through battle line.

As they went along the ridge they passed by several hundred men shooting down into camp, all of whom had white handkerchiefs around their arms (E. Thomas, 1267, 1269; E. Dougherty, 1289; A. Dougherty, 1306-1307; W. Thomas, 1336; Mrs. Perry, 1480; 1481, 1482, 1488-1489, 1491; see also Dalton, 1773).

These handkerchiefs seemed to disappear as the party

got nearer Hartford (E. Dougherty, 1291; W. Thomas, 1342).

Distribution of Union ammunition.

As they were going along they noticed a man with sacks of ammunition on a horse going up and down the line where the men were shooting, dealing it out to them (E. Thomas, 1268; W. Thomas, 1337; Mrs. Perry, 1480-1481). This was evidently the same man that Smith and his daughter had seen starting out of Midland in the morning with two sacks of something on a horse (1758, 1761).

Experience at the spring.

The party finally stopped at a spring where they were insulted in various ways by 75 or 100 Union men with guns who congregated there (W. Thomas, 1337-1338) and where one of the party, who had on his mine clothes, was run off, leaving his wife and children with the party (E. Thomas, 1267-1268; E. Dougherty, 1289-1290; W. Thomas, 1338; Mrs. Perry, 1481; J. J. Johnson, 1809-1810).

On the way to Hartford they met many men who were going toward the mines (W. Thomas, 1338; Mrs. Perry, 1481-1482), who referred to them constantly jeeringly as "scabs."

Many of them said "There goes a lot of scabs; there go the God damned scabs; they have broke the God damn scab-nest up" (E. Dougherty, 1292).

Arrival at Hartford.

They reached Hartford at about 2 o'clock (W. Meeks, 1728-1729), and were taken to the Union Hall where they were guarded by the Union men until Sunday morning. John Conroy, the mayor of the town, then bought their tickets and sent them back to Tennessee (1269, 3309-1310, 1729, 1812). As to Conroy, see also (*infra*, pp. 155–157 of this Brief).

Union admissions.

While at the Union Hall their captors admitted to them on many occasions that the whole affair had been put through by the Union (E. Thomas, 1269; E. Dougherty, 1292, 1293, 1294, 1295, 1296, 1297).

One of the Union men, Charlie Pattie (see pages 1296-1297, 1308, 1310, for identification of Pattie and Stroupe), told Dougherty that there was not a man in Hartford but

belonged to the Union, and that they expected to "wait on Jamestown," another open-shop mine in a few days (1296); that the Union was too strong for open-shop operations to go on in this vicinity (1309; see also W. Thomas, 1339, 1340, 1341; Mrs. Perry, 1482, 1485, 1492-1493).

The Union endeavored unsuccessfully to get the men to sign statements to the effect that the company employees had started the shooting (E. Dougherty, 1292; J. J. Johnson, 1810-1812).

Tom McDonald.

One of the Union miners, Tom MacDonald, heard that the Doughertys were there and having known them back in Tennessee, came to get them and took them to his house for the night. While there he told them that he had been out to the mine several times to try to get them out before the trouble, which he knew was coming (E. Dougherty, 1294).

He said, "There was 6000 Union men that were there that came from Oklahoma and Hartford and at another station back there, I disremember what place, anyhow there was 6000 of them and they drunk since they went into their meeting over there 1300 gallons of whiskey" (E. Dougherty, 1294-1295).

"His wife was there and the two children. His wife said, 'Now Tom, look here old fellow, don't be talking that way. Mr. Dougherty might happen to be a witness,' and Tom stopped then and did not talk any more" (1295).

Mrs. Perry's return to Prairie Creek.

On Saturday Mrs. Perry, accompanied by two Union men went back to get their effects but found that most all of them had been destroyed (E. Thomas, 1270; Mrs. Perry, 1482-1483, 1484).

On the way they were frequently stopped and lectured on Unionism (1483).

They were told that the miners expected to pay the expenses out of the Company's stores which they had captured (1484).

Capture of Sam Thomas and party.

Eight of the other employees, among whom were Sam Thomas and two Doughits, John Baskins and Earl Syls-

berry, left the property between 9 and 10 o'clock in the morning, and later were captured by some 16 Union men with Winchesters and from there taken by a roundabout way to the Prairie Creek Union Hall, otherwise known as the School House.

They were turned over to a man whom the Union men called Captain, and who was afterwards identified as Charlie Blackburn (S. Thomas, 1662).

After staying there for some time they were conducted up the hollow out of the way of the shots, where they were searched, and then taken farther to a little log cabin. While they were sitting in the log house there came a yell from outside as No. 4 was finally captured (1663).

Murder of Sylsberry and Baskins.

After a while Slankard (the Hartford constable, also committeeman from Local No. 1530 at Hartford, (2383) came into the cabin and what followed is best described by the witness, Sam Thomas (1663):—

"Q. Go ahead and tell what was said and done?

"A. He came there and he said to these men that was guarding us. 'These are my men and I am going to take them to Hartford,' and he told us to come out and line up, and I stepped out of the log cabin first—I stepped out of the door first onto the path and John Baskins stepped out right to my side and we started off, and Earl Sylsberry was the third man out of the cabin. And I heard a shot fired and John Baskins fell right at my side, and I heard another shot fired and I seen Earl Sylsberry—I turned around and seen Earl Sylsberry grab himself right there (indicating) and he just stood up and wheel around this way (indicating) until he faced the man again, and I seen the fellow shoot him and he shot him right there (indicating), and I seen him shoot him the second time, and he turned around and faced the fellow again and he fell, and the fellow walked up to him and looked at him and he used an oath in it and said, 'I guess you will not scab any more,' and he pointed the gun at him and put a bullet right through his heart. I seen the bullet hit him right there (indi-

cating). And he walked over then to Baskins and used his foot and he kicked him; he kicked Baskins laying right there, and I never seen a move out of the man after he was shot at all. And he came to me and he looked at me and said, 'How long have you been down there?' And I said, 'I have been down there a couple of days,' and he said, 'If I had known you were down there, I would have treated you the same way,' and we had a pretty stiff argument. And some one walked up to him, I didn't know him, and said something to him, and he walked on off over the hill, and I sat right down on a big rock, with Baskins laying right in front of me. There was a round rock—well, it wasn't exactly round, but it was a big rock, and I sat on that and cross my legs that way (indicating), and I sat there talking to that fellow with my coat across my lap, and this other fellow, whoever he was, came up to him, and said something to him, I didn't hear what he said, but this fellow went on up the path and over the hill, and that is the last I seen of him."

The same occurrence is described by E. Doughit (1539) and Mike Doughit (1542), who were in the captured party, and also by Fred Francis, a Union boy (1546), and Dave Stanley, Union sympathizer (1552), who were present in the crowd.

Beside Slankard, two other Union men were identified in the crowd at the shooting, B. Trout (1564) and Valentine Borrillo (1541).

Although there were a hundred or more men present, all Union members or sympathizers, no attempt was made by Slankard or any one else to prevent the murder or to apprehend the murderer.

Doubtless the reason for the murder of Sylsberry was that he was a member of the Union (1202), and hence regarded as a traitor to the cause. Both Baskins and Sylsberry were local men who would have recognized most of the participants.

Baskin's brother and another man went down to the place of the murder, on Saturday, July 18th, to look for Baskins' body. After having been given a safe conduct by Tom King, District Organizer, they were turned back by Frank Schofield, Local Union Secretary, who assured them that no one had been killed and if there were he would have them hunted for (Rauser, 1713, 1754; Baskins, 1755, 1756, 1757). Search for Baskin's body.

On Sunday July 19th Sam Thomas went back to the log cabin with Paul Little, the prosecuting attorney, and a deputy sheriff. When they got to the scene of the murder they found that, probably as the result of Charles Baskin's visit on the day before, the cabin had been burned down and there was a large burned place where Sylsberry had lain. Thomas found a number of bones in the ruins, including part of a human jaw with teeth in it (1665-1667). Return of Sam Thomas July 19th.

He left soon, at the suggestion of the sheriff, as a crowd began to collect.

During the battle Union guards were standing outside the fighting zone to keep non-combatants away from the trouble (Tramel, 1574; Green, 1586).

Although a number of "constables and marshalls" were identified as participants (Weeks, 1408), no arrests were ever made.

In addition to the distinct admissions on the part of the Union men to the Tennessee witnesses at Hartford, a number of Union men stated to the witnesses that the destruction of the Company's property at Prairie Creek had been accomplished by the Union (Mrs. Degan, 1409; Mrs. Smith, 1760). Union admissions as to battle.

The next morning after the battle, McNamara himself told McConnell, who kept the hotel where he boarded in Hartford,, "that they had shot it up and run the peopleoff that was working there, and had burnt the mines up, that is, the tipple and the coal cars, I think" (McConnell, 1590).

On Sunday, July 19th, the Dallas mine was partly destroyed (Steel, 1804-1805). Burning of Dallas mine July 19th.

On Monday, July 20th, the Coronado property was Burning of Coronado, July 20th.

burned down (M. B. Wiltsie, 1921; M. O. Wiltsie, 1926); the fire being preceded by the usual rumors from Huntingdon that 400 non-Union scabs were coming in to capture the town (Johnson, 1928; Finney, 1932).

Plaintiffs in error make much of what they contend are the separate circumstances surrounding the burning of the Dallas and Coronado mines on July 19th and 20th from those relative to the destruction of Prairie Creek Nos. 3 and 4 and Mammoth Vein Nos. 1 and 6 on July 17th.

The injury to the Dallas mine was comparatively small, amounting to less than $3000 (1976).

It happened in the middle of the night of July 18-19 and was clearly the work of an incendiary. In view of the fact that all the company employees had been run out of the country on July 17th it was clearly the work of the conspirators.

No objection was made by the defendants to proof of the damage to the Dallas mine, on the ground that it had not been shown to have been burned as part of the conspiracy, the objection being merely because the owner of it was not engaged in interstate commerce (see pages 1804-1805, 1974-1975, 1976).

Defendants themselves introduced a witness to minimize the damage to the Dallas mine (2630-2632) and made no motion to strike out the testimony relative to it or no request to the trial Judge to charge the jury to disregard it.

They clearly recognized the question as to the destruction of the Dallas mine as part of the issue to be left to the jury and their present contention (brief of plaintiffs' in error, pages 62-65) is merely an effort of counsel to raise an error which was not regarded as such by counsel who tried the case.

The foregoing criticism is also applicable to the proof of damage as to Coronado.

No objection was made to the testimony, and no request to the trial Judge to instruct the jury to disregard it.

On the contrary defendants tried to prove that Coronado was burned by the Company in order to get $9000 insurance on property valued at $65,000 (1024).

The total practically undisputed damage proved was $780,000. If the jury included anything in their $200,000 verdict on account of the burning of Coronado they did so because they believed that defendants' witness Schmidt was not telling the truth, as was manifestly apparent from his cross-examination (2620).

The burning of the Coronado mine was also clearly the work of an incendiary who poured a bucket of oil on the tipple and ran off before he could be identified.

Although the entire force of company men had been put to flight on July 17th and had all left the country, the destruction of Coronado was preceded by the placing of union guards around Huntingdon the night before and by a rumor that the scabs were coming to raid the town.

In their effort to make an alibi for themselves the union officials thus went a step too far and furnished entirely competent evidence, by the similarity of procedure to that shown to have been used by them three days before, that the burning of Coronado was part of the Union plot.

Bache appointed Receiver, July 25th.

On July 25th Bache was appointed Receiver of the Companies.

Threatening letter to Judge Youmans.

On the 27th Judge Youmans, who then had under consideration the proceedings for contempt which had been instituted by the Government against Stewart, Holt and a number of other Union officials, received the following letter which James Crossley, a prominent member of the Frogtown Local No. 2110, and later after his release from jail a regular Union pensioner (2472) afterwards pleaded guilty to writing (1820):—

"July 27, 1914.

"*Judge Youmans.*

"DEAR SIR:—You know the acts you have decided upon. As a warning friend we caution you to be more considerate upon the administration of your

decisions. You are notified to comply with the requirements of your office. If such is not complied with very shortly there is likely to be an unexpected change between your soul and fleshy temple, and you won't know the day or time or by what means such will take place. Still we don't want to act cowardly but give you a little time to act differently. At any rate you will have a little time for future preparation for that place called Heaven. You are weighed in the balance and found wanting. There is a great change soon to happen.

"(Signed) FOREWARNED.

"This is a barking dog and if teased much longer will bite.

"(Signed) PRESIDENT OF COMMITTEE."

Re-opening of contempt proceedings.

The contempt proceedings were reopened to take additional evidence August 19th to 25th, and on September 1 Pete Stewart, Sandy Robinson, John Manick, Clint Burris, Pink Dunn, George Burnett and Frank Gripando, were sentenced to jail terms (2487-2488).

After this the Receiver was ordered to operate the mines.

Attempt to open mines in October.

An attempt was made to do so toward the end of October and another battle ensued, of which both employees (Shaleen, 1781, Atkinson, 1763) and the neighbors (M. W. Weston, 1851-1852), received due warning from the Union.

Renewed attack by the Union.

The employees were again driven off (Atkinson, 1763, 1764, J. Shaleen, 1781-1782, C. Shaleen, 1786-1787, Cole, 1830, Johnson, 1831-1832. See also Rankin 1765 for conclusive admissions that this was the work of the Union).

Rescue of prisoner from U. S. Marshal.

When a United States Marshal had arrested a participant in this affair for violating the injunction, the prisoner was taken away from the Marshal by three armed Union men and a Union sympathizer (Hamilton, 1767, 1771, Baker, 1775-1777, Jones, 1833-1835, Kessinger, 1879).

This practically ended the serious attempt at operation. In November, four troops of United States Cavalry arrived to enforce the orders of the United States Court (729), the Company then opened a few wagon mines, "pigeon holes," but the boycott and intimidations continued during January (Choate, 1647-1649, J. Shaleen, 1783, C. Shaleen, 1786, Morgan, 1788).

Forfeiture of leases.

The Company's leases were then forfeited by a petition on the part of lessors, on the ground that the Companies were insolvent, by reason of the destruction of their property, and were not in a position to be able to continue to perform the covenants in the leases (Bache, 1037-1038; Denman, 1904; Finley, 2337; Decrees of Cancellation, 2374, 2376).

The Criminal Proceedings and Pleas of Guilty.

In December the ringleaders of the Union members and officers were indicted for conspiracy to violate the laws of the United States in disobeying Judge Youmans' injunction.

Stewart, Holt, McNamara, Slankard, Burris, Manick, Layton, Crossley, Branch, Champion and Reed **all pled guilty** and on January 20th, 1915, were sentenced to pay fines aggregating $8500, **which were paid by the Union** (2471, 2484) and to serve jail sentences, ranging from two years for McNamara to ninety days for Crossley (2415–2424, 2476–2482).

Damage Proved.

The damage to the companies' property and business was divided into three heads, physical damage to plant, loss of leases, and destruction of business and good will. The witnesses did not place any specific estimate on the value of the business or good will, although facts were given from which a great loss was apparent.

The estimates by the witnesses as to the damages varied somewhat but not radically.

The damage to physical property was fixed by Mr. Denman at $246,588 (1953, 1963, 1972, 1976, 1980.)

Mr. Bache fixed the physical damage at $205,000 (2326-2327).

The loss of the leases was estimated by Mr. Denman at $502,000 (1978, 1987, 1989, 1994); by Mr. Bache at $539,000 (2326-2328).

The loss of three of the leases valued by Denman at a total of $475,000 and by Bache at a total of $485,000 was estimated by Mr. Gilman at $517,000 (2296-2297).

The loss of two of the leases fixed by Denman at $425-, 000 and Bache at $430,000 was estimated by Mr. Eyster at $420,000 (2283).

Taking an average of the estimates of the four witnesses on the items covered by each, the damage proved from the destruction of the physical property was $255,000, and from loss of the leases $525,000, or a total of $780,000.

The verdict was for $200,000, or less than the physical damage.

The estimates of the value of the leases were made on the assumption that they would have been operated under Union conditions. If the Court had been able to protect the properties from the Union and they could have operated open shop, they would have been very much more valuable, since the cost of operation would have been reduced at least 20% (Bache, 678-682, 718-719; Denman, 2036; King, 2058; Hilling, 2301).

After counsel for defendants had brought out on cross-examination that Denman's estimate of the value of the leases was based in part on the profits that could have been made by operating them, he explained on re-direct, that he had accurately figured, based on cost of production and sale price down to the date of his testimony, that during such period the companies, even under Union conditions, would have made a profit of more than $600,000.

There was no real dispute by defendants of the amount of damage done. Although they called one witness in an attempt to show that the amount of available tonnage at Coronado was exhausted, he clearly showed on cross-examination that his testimony was based on a mis-

understanding of the lines and acreage covered by the properties (Shaw, 2813).

In his argument to the jury one of defendants' counsel stated that the question was not one of damages, but of liability.

The editorial in the United Mine Workers' Journal for July 23rd, 1914, entitled "The Truth About Hartford, Arkansas" (*infra*, p. 136-138 of this Brief), estimated the damage at $200,000 (2392).

A later article in the Journal (Nov. 26th) estimated it at $500,000 (2403).

Both estimates by defendants were made before any of the leases were forfeited.

The Attempted Defense.

Defendants' evidence is further discussed later on in this Brief, in connection with Judge Elliott's supplemental instructions to the jury.

As heretofore stated, the only defense which the Union attempted to make to plaintiff's case, was that the destruction of the mines was the result of an uprising on the part of the entire country-side, caused by the alleged depredations of the non-union employees.

Exit from Frogtown.

Defendants' proof as to this made a sorry showing. A number of witnesses testified that they left Frogtown for Hartford, for fear of injury, on the night of July 16th, or a day or two before, but on cross-examination it came out clearly that they were the families of the Union participants and were being moved out of harm's way.

The little girls.

Defendants also called the two sisters of Charley (Blue) Johnson (2584, 2599), the two sisters (2578, 2592) of Ves Howard (one of the three Union committeemen who visited Cameron just before the riot), the daughter (2607) of John Mastell (to whom the guns were shipped by Holt, 1687-1688) and the sister (2610) of John Manick, President of Local Union No. 1565. These little girls were in April, 1914, aged eleven and twelve years (one thirteen). They swore that on many occasions the company employees had made indecent proposals to them. They had never

complained to their parents or brothers of this, however, or if they did, nothing was done about it in the way of having the men arrested, although officers of the peace were near at hand (2590, 2591). They further swore that it happened before school closed on April 17th, although the Company men were all run off on April 6th and, except for a few who came back to pump out the mines on April 15th, there were no Company men there until after April 17th. As this testimony proceeded, each little girl evidently tried to improve on the performance of her fellows, until finally Mary Manick capped the climax by swearing that one day in April 1914, Mr. Denman had come riding along on a red horse and had taken from his pocket and thrown at her five or six rocks, "some of them as big as your fist" (2612).

Failure to call principal participants.

As Mr. Denman was in the East continuously from December, 1913, to June, 1914 (3148, see also 2611, 2614), Mary's performance put an end to this line of testimony, and the little Burrises, Slankards and McNamaras, if any such were waiting in Court, went home without giving their testimony.

Neither Pete Stewart, nor Jim McNamara, nor Jim Slankard, nor John Manick, nor Fred Holt, nor Clint Burris, nor Sandy Robinson, nor Frank Schofield, nor Charley Blackburn, nor John Mastell, nor Oscar Layton, nor any other of the ring leaders were called to testify, although it appeared affirmatively that Stewart, Slankard, Burris, Robinson and Layton were all on hand at the trial (3148–3149).

Not one of the hundreds of participants was called by defendants, nor is there a word of direct testimony in the Record that a single participant was moved to take part in the destruction of the property because of "the intolerable conditions created in the Hartford Valley by the employees and servants of the defendants in error."

Having thus seen the circumstances and proceedings by which defendants were impregnated with the motive for destroying plaintiff's property and business, and having

reviewed the acts and declarations of the immediate participants as showing that they were in fact actuated by that purpose, we may now turn to our third subdivision, the Official Union Proceedings and Publications During the Course of and Following the Prairie Creek Strike.

3. Statements in Defendants' Official Publications and Proceedings.

On April 6th occurred the Riot which resulted in the flooding of the mines, the serious injury to several employees and the heralding of the Union victory by the placing on the tipple of the banner inscribed:—

" This is a Union Man's Country."

During the months previous to this, a suit had been started against the Operators' Association, at the instigation of Mr. Bache, to investigate the improper and secret use of Association funds for bribery of certain Union officials, including Fred Holt, the Secretary-Treasurer of District 21, in connection with the negotiation of the contracts with the Union in 1910 and 1912 (2390, 2743).

This suit was being tried at Kansas City at the time of the Riot, and there were present, as witnesses or spectators many prominent union officials, including President White of the International Union, International Executive Board Member Mullen (the Board Member for District 21) President Pete Stewart of District 21, and Messrs. McLachlin, Sparling, and Dalrymple of the District 21 Executive Board.

Whether or not these men knew of the Riot of April 6th before it came off, or just when they learned of it, does not appear from the Record, which shows only that on April 8th Stewart and Mullen (President and National Board Member for District 21) left Kansas City, where President White was, and came to Fort Smith, where they stayed for two days, and then returned to Kansas City, all on Union Business, since their expenses were paid by

the Union, Mullen's by the National Organization, and Stewart's by District 21 (2386, 2387, 2389).

The United Mine Workers' Journal is constituted by Article XIX of the International Constitution (Record, p. 449), its official organ. It is published weekly from the headquarters of the National Union by the Executive Board and under its supervision (449, 505). The Editor is appointed and is dismissible by the International President. The Constitution further requires that each Local Union must subscribe to the Journal and that the Recording Secretary of each must examine every issue and read the official communications to the members (Article XIV, Section 41).

On the front page of the issue of the Journal for April 16, 1914, there appeared the following account of the Prairie Creek Riot of April 6th (2384-2385):—

"ARKANSAS MINERS DETERMINED.

"Demand Union Conditions.

"FORT SMITH, ARK., April 7.

"Unionists today have frustrated an attempt of the officials of the Bache-Denman Coal Company's mine, at Midland, near here, to strangle their organization and operate under an 'open Shop' policy. Previous to this decision 200 union men had been employed.

"The miners met about a mile from the Mammoth Vein mine, as the mine is known, and held meetings. They were addressed by a number of speakers, including Miss Freda Hogan, daughter of Daniel Hogan, a prominent Socialist. Following the meeting the men formed in line and marched to the mine.

"Several clashes marked the efforts of the unionists to persuade the men in the mine to join them. Following a disturbance in which two guards were hurt, the miners joined the unionists and left the pit. A United States Flag was then hoisted from a nearby pole and the crowd departed.

"The company has announced its determination to inaugurate the 'open shop' policy at its six other mines in Western Arkansas and Eastern Oklahoma next fall. At present they are closed for the summer."

As we have heretofore seen (*supra*, pages 14-31 of this Brief), the International Executive Board is the highest power in the Miners' Organization except a convention of delegates. In the interim between Conventions it is practically omnipotent. This Board is composed of the International President, Vice-President and Secretary-Treasurer, *ex officio*, and of a representative from each District Branch.

The next meeting of the Board after the Riot of April 6th was on May 4th at Kansas City, at which meeting James Mullen, the Board member from District 21, was present. At this meeting President White made a report to the Board relative to the bribery charges and litigation instigated by Bache, above referred to, in the course of which he said (2390):

"PRESIDENT WHITE:—Another matter I want to mention to the Board before we adjourn. I have a few matters here I wanted to state, in order that my action might be known to the Board officially and the Board would have the information that they ought to have in a brief way. Several weeks ago, or rather, more than two months ago, I guess it was, a suit was instituted in the Southwest by a man by the name of Bach, a member of the Bach-Denman Coal Company, against the President of the Southwestern Interstate Coal Operators' Association, Charles S. Keith, in which he demanded an accounting of the funds of the Southwestern Coal Operators' Association." * * *

"Well, that was all the object this man Bach had in mind, was to procure the information."

* * * * * * * *

"When he secured this information, he immediately

went down to Arkansas and started to run his mine non-Union. **The boys simply marched in on him in a day down there and kicked his Colorado guards out of there and broke their jaws** and **PUT THE FLAG OF THE UNITED MINE WORKERS ON TOP OF THE TIPPLE** and pulled the fires out of the boilers, and that was all there was to it, **and the mines have been idle in there ever since."**

Several features of this incident are particularly significant.

President White shows entire familiarity with the circumstances connected with the Prairie Creek Strike. This and White's interest in Bache as the instigator of the Holt bribery charge are most important in connection with White's attendance at the District 21 Convention at Fort Smith two weeks later and his address to that Convention, to which we shall presently refer.

President White, in the secret councils of his Executive Board (the minutes of which are not made public, and which were obtained for the trial by plaintiffs on order of Court after a strenuous legal contest) openly approves the violent means used by the miners against the non-Union employees.

Finally White recognizes in absolutely unmistakable terms that the acts had been done by the participants **as representatives of the United Mine Workers of America,** boasting that the **United Mine Workers' Flag** had been placed on the tipple as the emblem of Union victory, and that the mines had been idle ever since.

By this statement White clearly acknowledged that it was an agency of the National Organization which had done these acts, that they were done in the name of the National Organization, and further expressly **took the benefit** of these acts for the National Organization, since he congratulated his fellow Board Members that the mines had been "idle ever since," this having been the sole purpose of the Riot from the Union standpoint, and the **benefit** which the Union was to obtain from it.

If, as contended by the defendants, the Union was opposed to violence, and if it were a fact that the riot was not planned and put through by the local officials in furtherance of the objects of the Union but was a purely local affair with which the Organization had nothing to do, it was clearly incumbent on President White, at the very next opportunity which presented itself, to repudiate those who had, without warrant or authority, assumed to represent the Union by the use of its emblem, to discourage the violent and unlawful methods used by the miners in settling their differences with Bache, and to use his utmost influence and counsel to prevent a similar occurrence.

An opportunity for such action by White presented itself almost immediately.

During the week beginning May 18, just two weeks after the May 4 Board Meeting, there was held at Fort Smith a special Convention of District 21, consisting of representatives from all the Local Unions composing the District, for the purpose of taking action on the charges of bribery against Fred Holt, the District Secretary-Treasurer, which had come out in the litigation at Kansas City, instigated by Bache, above referred to.

President White attended this convention throughout the entire week that it was in session. At it were also President Stewart of District 21 and Board Member Mullen, and also Wm. McLaughlin (or McLachlin) the District Board member who was in direct charge of the Prairie Creek Strike (2438).

It is impossible to believe that Bache's connection with the proceedings then under investigation and his troubles with the Union at Prairie Creek, only a few miles away, were not frequently discussed by those attending the convention.

McLaughlin had been sent down to Hartford by the District Board in April to handle the strike (2744). He attended the Fort Smith Convention during the whole week of May 18, during which time, as one of the principal District Officers, he must have seen and talked to White every day.

If White had really disapproved of what had been done on April 6, in the name of his organization, if he had really considered it his duty to discipline the Union participants and if he had honestly desired to prevent a recurrence of the violence, it was from McLaughlin that he would have got his information and through him that he could have given his instructions.

McLaughlin testified, however, that not once during the week did he hear White mention the Prairie Creek Strike, that he gave him no advice or instructions of any kind with regard to it, **that he never heard White express any disapprobation of anything that had happened** there whether to McLaughlun or to any one else, **that neither McLaughlin nor any other union officer took any steps whatever toward disciplining within the Union any member who had taken part in the riot,** and indeed that McLaughlin had made no investigation as a Union Officer to ascertain what part the Union Officers and members had taken in it (2744–2746).

He stated that, as a union officer, he did not consider it part of his duty to discipline union members who used violence in labor disputes as the Union Officers merely "let the law take its course" (2745).

In other words, although McLaughlin claimed to have been sent down to Hartford by his organization to keep the peace and to prevent the miners from violating the injunction, neither he, nor his superior White ever said a word or lifted a hand to express official disapproval at what had happened or to prevent its happening again, although they both knew perfectly well that a serious breach of the peace had been committed by Union members in the name of the Union and for its purposes and benefit.

White's attitude and action went, however, much farther than a mere negative. The speech which he delivered to the convention at its opening, in the light of what had occurred, and of what White and the other delegates and officers of District 21 knew, was in itself sufficient not only to stamp with the appproval of the National Organization the part which the Union had

played in the events of April 6, **but also to inflame the miners to further similar efforts in their war on open-shop operations.**

White addressed the Convention on May 18, at its opening. His entire address is found on pages 1135 to 1144 of the Record and is called to the particular attention of the Court.

After the usual formal introductory words White said:—

> "I am glad, however, and thankful, for the privilege, as well as the honor, of being with you on this occasion and saying a few words in a general way about the conditions of our organization. I have not as broad an acquaintance with the miners of District 21 as I have with some of the other districts.
>
> **"However, I have known of the value and worth of the organization of District 21 for many years. We have watched your struggles with a good deal of pride and satisfaction and have admired you for the splendid fighting qualities that you possessed."**

Was the foregoing calculated to give the hearers an impression that the National Organization in any way disapproved of what had been done during the past six weeks in the only industrial struggle in progress in District 21, done in the name of the Union and for its avowed objects and purposes, the particulars of which White knew full well? Was it in any way calculated to discourage the miners from the exhibition of further similar "splendid fighting qualities," breaking the jaws of a few more guards, intimidating and driving off by violence other non-union employees?

The address continued:—

> "I recall your early struggles for the establishment of **our union** and the splendid fight you maintained to perfectly establish our principles. * * *
>
> "Possibly at no time in the period of the United

Mine Workers have we ever been so bitterly opposed by the opposition as we have been in the last eighteen months or two years.

"This is probably due to the fact that in the great non-Union fields of this Country for many years our organization has to great extent, at least, lapsed into indifference and failed to extend its lines into these rich coal producing countries **that are of such prime importance to the organized district of the country."**

White then reviewed briefly the two-year strike in West Virginia which had recently ended, and the great strike in Colorado which was then at its height, emphasizing particularly the importance of the hoped for success in organizing Colorado for the protection of the Union in the Southwest and laying great stress on the opposition to the Union of the Government authorities and the alleged employment by the operators in their conflicts with the Union, of hired gunmen, desperadoes, criminals, murderers with guns, for the purpose of crushing out the ideals of Unionism.

These were the precise conditions which the union officials, throughout the Prairie Creek strike, by false rumors spread broadcast, both by word of mouth and by their official organ, the "United Mine Workers' Journal," sought to make not only the miners in Prairie Creek but the entire countryside believe were being employed by Bache. This was the same framed-up excuse which the Union was preparing for what it intended to bring to pass at Prairie Creek.

At the trial the plaintiff demonstrated beyond the shadow of a doubt and to the satisfaction of the jury that no such condition actually existed at Prairie Creek, and that the whole scare was an enormous hoax engineered by the Union to enlist the sympathy and co-operation of the countryside.

That McLaughlin and other District Officers knew this there can be no possible doubt. If White did not, one question and one truthful answer from Stewart or McLaughlin would have enlightened him.

His address was calculated and intended solely to fan the fire against the open-shop attempt then in progress within a few miles of where White was speaking, and to urge the miners to do more of what they had already so successfully accomplished **without, if possible, directly implicating the National Organization.**

If one in White's position and with his authority could do what he did or refrain from doing what he omitted to do during that week of May 18th, knowing what he knew, and incur no responsibility therefor on behalf of himself or his organization, then immunity by all conspirators would be easy to attain.

Such, however, is certainly not the law.

After dwelling on the enormous recent growth and power of the union,—"we now number nearly 450,000 members, easily we could influence more than 500,000," —White reached the climax of his speech, as follows:—

> "And after all this great fight and numerous sacrifices that we have made we can congratulate ourselves on the progress we have made and my sincere desire is to see our great organized districts free from industrial strife, so we may establish the union in other fields that we have referred to, **because any casual observer must know that in the strong organized districts we have about reached the end in our wage conditions unless we can bring about the organization of the unorganized fields.**
>
> **"You cannot keep this movement half slave and half free.** The fight belongs to the organized miners to make. You who have tasted of the fruits of this movement, and found out its benefits as compared with the conditions of the past, know that the great brunt of this battle must of necessity fall upon your shoulders, to free these fellow-workers in the non-union coal fields of this country."

Spoken to men who were then engaged in a struggle to keep non-union men from securing a footing in their

midst, and who, as White had boasted to his Board, had been so far successful, by the employment of violence and bloodshed, in keeping the non-union mines from shipping coal, this could mean but one thing—the emphasis of the supreme importance to the National Organization of the keeping out and stamping out of every vestige of non-unionism, and **the ratification by the National President of the methods which he knew had already been employed for this purpose against Bache in District 21.**

White's speech had the desired effect on the officers of District 21.

On the Monday after the Convention closed (May 25th) Pete Stewart made his speech in front of McGee's Drug Store in Midland, in which he promised to arm the miners with rifles and to carry a gun and die himself before the Bache mines be allowed to operate non-union (*supra*, page 89 of this Brief). His reference in this speech to the alleged horrors of Ludlow, Colorado, were clearly inspired directly by White, as the excuse for what he and his fellows planned to do unless Bache would give in.

Even more significant is Stewart's conversation at this time with Marshal Johnson on the train.

Speaking of the opposition to the Union by the Government of Colorado and the State Militia, White had bemoaned the fact that the militia had been sent in not to protect the miners, "but when the miners get the best of them he sends the militia down there to protect the vested interests."

"Damn the injunction," said President Stewart to Marshal Johnson, **"the National Government is against us but the people are with us, and we are going to win. We are not going to let them dig coal,—the scabs."** (1499–1500).

During the period from April 6th to May 25th, the miners, as we have heretofore seen, had not been idle at Prairie Creek.

On April 9th Judge Trieber had granted an injunction

against 65 Union members and sympathizers, which injunction was made permanent on May 9th.

After this, as we have heretofore seen, there was a continuous series of intimidations and assaults of company employees.

Matters did not, however, assume a sufficiently important aspect to secure notice again in the "Journal" until July 9th.

There then appeared in the United Mine Workers' Journal the following contribution by "Uncle Billy" Cluck, one of defendants' principal witnesses and, after his release from jail, a Union pensioner (2391, 3157):

"FROM ARKANSAS.

"FIGHT ON AT HARTFORD.

"HARTFORD, ARK., July 3.

"I wish to have a few words in the 'Journal' in regard to the **strike** here at No. 4, Prairie Creek, for which they are scabbing and furthermore new men are coming in from all over the country. Some think No. 4 is working under Union conditions and I wish to help strangers out so they will not come to Prairie Creek No. 4.

"The Bach & Denmon Coal Co. have wires around the shaft and tents in the bull pen in which they have about 120 scabs and new ones coming in every day. The Company has put the Union miners out of their houses so they may have more room for more scabs. The men here are in tents in the backwoods, so do not let the labor agent talk you into coming to Prairie Creek No. 4. We are out to win and we intend to do so. We have strong bunch of scabs here. We have scabs from Spadra, Ark., and U. S. gunmen who have come here from Colorado to guard the Arkansas scabs.

"W. H. CLUCK."

One of plaintiff's most impressive witnesses, Jess Goacher, whose character and reputation for truth de-

fendants vainly sought to attack, had testified that sometime after the battle of July 17th "Uncle Billy" Cluck had told him that **it was he and Jim Slankard who had really shot up Frogtown in order to bring on the battle** (1460).

In view of this testimony it is interesting to read another letter written by Cluck to the "Journal" a day or two after the shooting up took place.

In the issue of July 23d appears the following (1462):

"FROM ARKANSAS.

"THE STRIKE IS STILL ON.

"HARTFORD, ARK., July 15th.

"I want space in the 'Journal' to tell of some of the conditions existing at Prairie Creek No. 4. We had a little trouble here on Saturday night, July 12th. Some of the scabs got out of the bull-pen and started to shoot up Camp Beulah at the Mammouth Mine. There was quite a number of shots fired, but none of the miners or their families were injured. The men are firm and out to win. Everything has been quiet since Sunday night.

"Our District President and some of the boys have been on trial over an injunction.

"We are asking all men to stay away from here until this trouble is settled, as it is supposed they have agents out looking for men. Will you give the news through the 'Journal.'

"We have the regular type of scabs at this place.

"W. H. CLUCK."

In the next issue of the "Journal" after the battle, July 23d, there appeared the following authoritative account of the battle and the causes thereof, in the form of an Editorial (2392):

"THE TRUTH ABOUT HARTFORD, ARKANSAS.

"Attempts on the part of the hired army of the Bache-Denman Company, New Hartford, Ark., to

emulate the Colorado gunmen militia brought about an outbreak **on the part of the union miners,** in which the gunmen were badly worsted.

"When the Bache-Denham broke with the organization and locked out the union miners, the organization in District 21 furnished tents for the miners who were evicted from the company's houses.

"The tents were on private grounds, rented by the organization; were as much the property of the men who lived there as is the mine tipple, the offices, or any other of the buildings around the mine the property of the company.

"More than that, the tents were, and are, the only shelter these men have—the only protection for their wives and children.

"The operators recognize that these tent colonies indicate to any of the men they may bring in under false representations the fact that a strike is on. Many such men have turned back when they saw these tent homes.

"For many weeks past the private army of the operators harassed the miners and their families in their tent homes. Night after night the tents were shot into from the surrounding woods. Men and women going from the tent colony on business of their own have been waylaid and beaten. Many of the men have gone out from the camp and never returned. In fact the conditions surrounding the miners' camp indicated that a repetition of the Ludlow horror was the intent of the gunmen.

"All night Thursday the tents of the miners had been the targets of the hired thugs. **Union miners living at a distance** heard of the attack. Determined that a massacre like that of Colorado should not be perpetrated upon their friends and relatives many men marched to the rescue. The sharpshooters were dislodged and followed to their camp; shots were exchanged all the way. **The miners then determined to destroy the enemies' stronghold as a**

matter of protection for their homes, the only shelter of their families.

"We do not advocate force as an argument. We would adjust all of our differences at the council table, if the choice was ours. But when it is necessary to protect our homes, our families from the attacks of hired ruffians who do not spare, as we have learned too well, the mother or the babe, to whom murder and arson are 'all in the day's work,' **we applaud the men**—would be glad to personally aid the men who defend their homes, **even though it be necessary to follow their assailants to the shelter of the companies' buildings,** their rallying place, from which they come forth at night on their work of destruction.

"There are no arguments we can offer to the hired gunmen of the enemy. Their work is to cast the bludgeon of force into the scales of reason.

"We maintain, and those who have not been prejudiced by lying reports, and are not personally interested, will agree that the men of Arkansas had a perfect right to protect their homes and their loved ones from a like fate as that which overtook the victims of greed and violence at the Ludlow tent colony."

In the foregoing article we have not merely competent evidence, but an official acknowledgment, that the destruction of the Bache-Denman properties was accomplished by the Union in furtherance of the labor dispute then in progress between the "Organization" and the Bache-Denman Companies.

The National Organization "applauds" its members for doing what it considers their duty under the circumstances.

Whether or not investigation had been made as to the truth of the facts relied on as a justification of the Union's action does not specifically appear, but in any event the National Organ takes it on itself to vouch

for them, admitting what its representatives had done in its name, and resting solely on what it contends was ample provocation.

In other words, while the plea of the Union at the trial of this case was a denial that it or its agency had done the acts that caused the damage, its plea in July, 1914, was not a denial, but was in confession and avoidance.

The Union officially acknowledges that it was the Union that did the damage, and relies for its defense solely on the contention that it was justified in so doing.

Such is the effect in the present stage of the case of the Editorial above quoted.

While of course for the purposes of the trial it would not have the conclusive effect of a legal plea, yet it contained **a distinct and authoritative admission that the damage was done by Union members in the furtherance of a Union object—in the course of the Union's business.**

In itself this Editorial thus furnished the jury with sufficient evidence on which to resolve the issue of agency in favor of the plaintiff, and hence, at the present stage of the case, disposes of the agency question.

Plaintiffs in error seek to explain these Journal Articles on the ground that they presupposed that the Union men were actuated by provocation. This in no way detracts from the effect of the articles as an official acknowledgment that what the men did and were doing was done **on behalf of the Union** as a Union activity.

A principal who acknowledges that his agent was acting for him, **on his business,** but relies on the contention that he so acted with proper justification can no longer rely on want of authority.

When the jury found that the justification relied on was a lie and a hypocritical sham, the lack of agency defense was no longer available.

In the issue of the week following there appeared a second article in the Journal which is equally conclusive against the present position of the Union. This article we also quote in full (2396):—

"BRAVO

"ARKANSAS COAL DIGGERS.

"(By Eugene V. Debs.)

"Hats off to the Arkansas coal miners!

"They have routed the gunmen and delivered a body-blow to the government by assassination.

"For some time there has been a strike on in the Hartford Valley, where one, Franklin Bache, arbitrarily refused to deal with the union and insisted upon operating a scab concern. When the miners in his employ struck he promptly did what the operators in West Virginia and Michigan did, and what the operators in Colorado are now doing, namely, he ordered out his privately-owned and armed gunmen and assassins, a small army, equipped with high power rifles, to slaughter the miners and their wives and babes and re-enact Ludlow.

"But the miners had heard of West Virginia and Michigan and Colorado and they were not caught napping. They were not so well armed as Bache's red-light gunmen, but what they lacked in physical equipment was more than made up in moral stamina, and when the smoke of battle cleared away several gunmen were found to have bitten the dust and the rest vanished into mist and no trace of them has been found since.

"Bravo, ye coal-digging slaves of the Pits! **You have done your duty in a heroic manner and deserve the applause of all honest men. May the miners everywhere catch your brave spirit and follow your inspiring example!**

"Government by private gunmen and the massacre of honest toilers must be put an end to in the United States.

"We Socialists are for peace and we are steadfastly opposed to violence except when lawless violence is forced upon us and we are compelled to fight for our lives and in defense of our families and homes.

"In recent years the great trusts and corporations have gone entirely outside of the law to wage their lawless warfare on lawful labor unions. They have established their thug-recruiting agencies in all the large cities, through which they drag the slum to recruit their army of cutthroats and assassins.

"This private army of the corporations, an absolutely lawless gang of man-killers, is armed with machine guns and high power rifles, and when workingmen go out on strike, as they have a lawful right to do, the corporation army of private thugs is at once ordered out to shoot them down like dogs and to insult, outrage and slaughter their wives and babes, as they did in Cabin Creek, Calumet and Ludlow.

"To submit peaceably to such criminal invasion of their rights and such infamous outrages upon their manhood, workingmen must be sunk to fathomless depths of degradation and dead to every sentiment of self-respect.

"In the case down in Arkansas the scab operator, following the example set by the operators in other States, had his court injunction issued, ordered out his private army of man-killers, then sat himself snugly down in his easy chair to wait until the miners whose labor had enriched him lay weltering in their own blood.

"But this particular operator was fooled. He got his lesson and he will not forget it. **When the battle was over his private army was annihilated and his mines and tipples, to the value of $200,000, blown up with dynamite, a mass of ruins.**

"This is the way government by gunmen and assassins should be made to react upon the criminal master class every time they put it in operation.

"Bravo, once more, Arkansas coal diggers! You have set a heroic and inspiring example to the working class of the nation.

"The corporation gunmen who massacre working-

men, murder women about to become mothers and suffocate and roast babes as they did at Ludlow, are the most detestable of degenerates and the vilest of outlaws. They are more dangerous than mad dogs and should be treated accordingly. They have absolutely no right that any honest workingman is bound to respect.

"They are private assassins and public enemies. They are the fomentors of strife, the inciters of riot and the shedders of innocent blood. They are a perpetual menace to peace and good government, and they thrive only in violence and crime.

"When these miscreants are sent out to slaughter honest men, pillage their homes and kill even the babes in their cribs it is time to take up arms against them.

"If the law under capitalism permits lawlessness and violence on the part of the corporations and their private army of thugs, and workingmen are denied the protection of the law then nothing is left for them but to defend themselves and their loved ones, and if they have not the manhood to do this, they deserve to be crushed beneath the iron heel of their despotic masters.

"Fred W. Holt, Secretary of District 21 of the United Mine Workers, testified in court that he had shipped the guns from McAlester, Okla., his home, to the miners in Arkansas 'for the purpose of enabling them to protect their wives and children against the outrages of the private armed guards.'

"All honor to Holt for having shipped the guns to the unarmed miners and for standing up in court like a man and admitting it.

"If government by gunmen is to prevail, then liberty is dead and the labor movement a farce.

"The Arkansas miners have throttled the monster and I appeal to the miners everywhere to arm themselves and prepare to do the same. They are strictly within their lawful right in arming them-

selves against lawless invasion and in defense of their homes.

"The next assessment that is levied by the United Mine Workers and the Western Federation of Miners should be levied for the raising of a gunmen defense fund for furnishing each member with a high power rifle and 500 rounds for the protection of their lawful rights, the defense of their wives and children, and for wiping out government by gunmen and assassination in the United States."

The most striking thing about the above article is its flagrant and disgusting hypocrisy.

According to the overwhelming testimony, all the rumors of the depredations by the "armed guards" and "hired gunmen" had been deliberately and effectively circulated by the Union for the sole purpose of framing up an excuse to pull off the battle of July 17th, and to get the neighborhood not only to tolerate the assault on the mines, but to take part in it.

There can be no doubt whatever that the National Officers knew this. Certainly John P. White knew it and his smug denial at the trial of knowledge of participation in the Prairie Creek affair (given before we had secured the minutes of the Board Meeting of May 4th, which effectively revealed him in his true character), is in accord with the similar professions of virtue and innocence by the other responsible officials in the Union.

If Debs did not know that the whole thing was a Union frame-up, as he probably did, certainly the editor who published the Article knew it.

It was the business of all of them to know the truth of such a matter before they gave it the official stamp of the approval of the Organization.

It is interesting to note that the amount of the damage which this Article boasts was inflicted by the Union on the companies, $200,000, is the exact amount awarded by the verdict of the jury. This was prior to the forfeiture of the leases, which constituted the largest item of damages.

The same issue of the "Journal" contained an account of the contempt proceedings pending before Judge Youmans at the time of the battle, which were reopened and resulted in the conviction and sentence of President Stewart and Secretary-Treasurer Holt shortly afterward (2394).

The issue of August 6, contains a notice by the Secretary of one of the Locals near Hartford of the expulsion of one of its members for "guarding scabs for the Bache-Denman Company at Prairie Creek during the recent trouble at that place" (2399).

During the fall of 1914 the "Journal" contained other articles describing the situation at Prairie Creek and giving further accounts of the history of the strike and of the battle of July 17, all reiterating as the sole justification urged by the Union, the illegal activities by the non-union men which forced the miners in "self-defense" to take the offensive (2400-2408).

The whole attitude of the Union in this case is so similar to that of the Prussians in connection with the war as to make an interesting comparison.

The invasion of Belgium in self-defense, because the Germans claimed they had heard that the French were coming that way.

The first use of poison gas preceded by elaborate and totally false announcement of its previous use by the allies.

The necessity of shelling coast towns and of bombarding London and Paris in defense of the Fatherland.

The sinking of the Lusitania to protect the German soldiers from the cargo of ammunition which it was said to carry.

These hypocrisies were so revolting to the American mind that they were not universally believed until subsequent events demonstrated them beyond the shadow of a doubt.

So in the case at bar, it would be hard to credit the hypocrisy to which the Union officials have descended in seeking to excuse or cover up their deeds, if the evidence in this case had not demonstrated this so clearly.

Indeed, even if the District and Local Branches were not legally agencies for the National association in the furtherance of its objects in conducting a strike—which we have demonstrated is the necessary legal effect of the constitution of the Union and the practice thereunder—the efforts of the National Organization to shield the local participants by reiterating false and lying excuses for their conduct might well be considered in itself sufficient to implicate the National Union in the conspiracy.

Another feature of the later "Journal" articles is also noticeable in this connection. This is the effort to ridicule and make light of the criminal accusations with which the Union Officials were charged and to which they pleaded guilty.

Thus the following is found in the "Journal" of November 26, having been written in all probability by K. C. Adams the Publicity Agent of the National Union who was then in Fort Smith and wrote an article on the causes of the Prairie Creek Strike under the same date, November 20 (2408):—

"26 MINERS INDICTED.

"(Special to Mine Workers' Journal)

"FT. SMITH, ARK., NOV. 20.

"The most unnecessary Federal grand jury ever assembled by a Federal judge to probe disturbances of a stricken community today returned twenty-six indictments against members of the United Mine Workers. The following were indicted under the blanket indictment: P. R. Stewart, former president of District 21; Fred W. Holt, former secretary of District 21; James McNamara, former member of the City Council, Hartford, Ark.; James Slankard, resigned constable of Hartford Township, Sandy Robinson, Charles Robinson, Bee Trout, Valentin Burillo, John Manick, Moro Colo, Wm. Reed, Michael Ryan, Foster Bean, Charley Robinson, Charles M. Blackburn, Bruce Jordan, Marvin Ray,

Ernest Neim, James Z. Crosley, Frank Crossley, Marvin Stanfield, Wm. W. Roberts, John Champion, Dave Branch, Jesse Edward and Clint Burris.

"The indicted men are charged with conspiracy. Some of the 'overt acts' set out in the indictment are interesting. The fourth count follows:

" 'Said Moro Colo (otherwise called Morro Colo) and Foster Bean (otherwise called Foster Beam) on May 16, 1914, at Prairie Creek, aforesaid threw stones at certain employees of said Mammoth Vein Coal Mining Company, to wit Charles Cheek, Earl Kuntz, Will Bohannon and Levi Brown.'

"The idea of a special grand jury of the United States being necessary to determine the damage done by a 'pebble thrower' in what is said to be by the judge of the court a serious conflict between capital and labor. Never before in the history of the Nation has the same smallness in scope of procedure been equaled.

"The fifth count in the indictment is doubtless one of the most serious charges that was ever embraced in any indictment. It follows:

" 'Said Sandy Robinson (otherwise known as Sandy Robertson), Moro Collo and Charlie Johnson, James Slankard and others on June 10, 1914, at Prairie Creek, aforesaid cut and destroyed a bag of feed belonging to said Mammoth Vein Coal Company.'

"The terrible destruction of a sack of feed is another evidence of the great danger to which the lives of the peaceful citizenship of Hartford valley was daily menaced and made necessary the calling of the special grand jury.

"And now we have the indictment resulting from the fact that Judge Youmans received a threatening letter from some unknown, which the judge said made him ever fearful for his personal safety. The section of the indictment and the letter follows:

" 'Said James Z. Crossley, on July 27, 1914, deposited in a railway post office on the Rock Island

railroad, for mailing and delivery to the Judge of said United States Court for the western district of Arkansas, a certain letter, to wit, a letter of the tenor following:

" ' "July 27, 1914.

" ' "*Judge Youmans:*

" ' "DEAR SIR:—You know the acts you have decided upon. As a warning friend, we caution you to be more considerate on the administration of your decisions. You are notified to comply with the requirements of your office. If such is not complied with very shortly there's likely to be an unexpected change between your soul and fleshy temple, and you won't know the day, nor time, nor what means such will take place. Still we don't want to act cowardly, but give you a little time to act differently, and at any rate you will have a little time for future preparation for the place called heaven. You are weighed in the balance and found wanting. There's a great change soon to happen.

" ' "(Signed) FOREWARNED.

" ' "This is a barking dog, and if teased much longer will bite.

" ' "President of Committee." '

"Such were the findings of a special grand jury of the Federal Court empaneled by Judge Youmans to probe the recent mining troubles in Arkansas.

"All of the men indicted will surrender and make bond."

Crossley was a prominent member of the Frogtown Local. In February, 1915, when his case came up for trial he pleaded guilty to writing this letter, was sentenced to three months in jail and served his term (2483, 2467), **immediately after which he was put on the pension list by the Union** (2472).

The Journal made no mention whatever, of the pleas of guilty entered by Stewart, Holt, Crossley, McNamara, and the others to the charges thus made light of.

It is interesting to consider in connection with the Union's attitude toward the admittedly true criminal charge against a member for threatening the life of a Federal Judge, the provisions of Article XX, Section 3, of the Constitution of the National Association (450):—

> "Any member guilty of slandering or circulating or causing to be circulated false statements about any member of, or **any member circulating or causing to be circulated any statement wrongfully condemning any decision rendered by an officer of the Organization,** shall, upon conviction be suspended from membership for a period of six months and shall not be eligible to hold office in any branch of the Organization for two years thereafter."

To condemn the action of a union officer is *les majeste,* but merely to threaten the life of a Federal Judge on account of a decision rendered or under consideration by him is deserving of a pension.

In affirming the judgment entered by Judge Youmans on the verdict in favor of Looper against Jim Slankard, Clint Burris, Dr. Chambers and a number of the other participants in the Riot of April 6th, the Circuit Court of Appeals said of the comparatively moderate outrages then committed on behalf of the Union:—

> **"We cannot read the record of this case without feeling a deep indignation at the method adopted by those who proposed to unionize the mine in question.** No one now doubts the right of any organized or unorganized body of men to seek to persuade in a peaceful and orderly way their fellow men to join their ranks; **but violence and lawlessness, as arguments to that end or as means of coercing others, cannot be tolerated.** Any persons who resort to violence to accomplish their purposes fall under the condemnation of the law, and cannot escape responsibility therefor by any subterfuge adopted to conceal or mystify their identity. To

make the law effectual as against any such practices, it must, in our opinion, be held that any one who consciously participates in the creation of a state of confusion, intended to prevent identification of the wrongdoer, or to safeguard him from detection or screen him from the consequences of his act, is an aider and abettor in the accomplishment of the wrong, and should be held as a principal in its perpetration." (236 Fed. 336, 339).

The International Union, acting through its International Officers and its Official Organ, has done what the Court so strongly condemned.

White's address to the Executive Board on May 4th was a clear direction to Mullen to go back to his District and see to it, by similar methods if necessary, that Bache's mine continued idle.

His speech at Fort Smith on May 18th had the same obvious effect.

The Journal articles subsequent to the Battle of July 17th and the action taken in the various conventions were a distinct attempt to cover up the wrong which had been committed in the name of the Union, a wrong unanswerably admitted by the principal perpetrators in their pleas of guilty.

The International Executive Board at its meeting on November 30th, 1914, again clearly recognized the part which had been played by the Union at Prairie Creek.

The minutes of this meeting, at which President White, Vice-President Hayes, Secretary Green and all the Board members were present, show that President White made the following statement to the Board relative to the Bache-Denman strike (2406):—

"ARKANSAS.

"LEGAL ADVICE IN DAMAGE SUITS.

"PRESIDENT WHITE:—Federal troops are in control of a certain section of Arkansas as a result of

violence that has taken place. A Federal judge down there got the troops, as I understand it, on the ground that contempt was being practiced upon his court. Some time ago a large number of indictments were secured against **members** of the United Mine Workers, some of the officers of District No. 21; I think some of them received sentences of four or five months, but the sentences have been suspended. The grand jury has been in session since, and I think they rounded up some 26 indictments in Judge Youman's Court. The lawyer in charge, Mr. Covington, sent me a communication in connection with this matter, asking me to have it submitted to some attorney accustomed to dealing with similar cases for the United Mine Workers, in order to get his opinion. * * *

"Mines down there were destroyed absolutely following the attempt of the Bache-Denman Coal Company to operate their mines non-union. They were formerly operated under the contract of District 21."

Conclusive evidence, that the Prairie Creek affair had been the work of the Union and that it was as the **representatives** of the National Association that they had done what they did there, is found in the proceedings of the next Miners' National Convention.

In the biennial convention for 1916, President White submitted a long report, covering, among other things, the "Litigation" in which the Union had been engaged (2426).

"LITIGATION.

"This administration has been confronted with almost every conceivable form of opposition by the enemies of our movement. We have been engaged in litigation and our people have been subjected to the worst form of persecution at the incitation of the coal companies and their emissaries in the various non-union sections of the country."

* * *

"ARKANSAS.

"During the trouble in Arkansas a number of our **members and representatives** were indicted in the Federal Court and some were fined and imprisoned."

After referring to this and certain other "litigation" in which the Union had been engaged, he concludes the sub-division of his report on "Litigation" as follows:—

"Thus it will be seen by the attempts set forth in these proceedings that our enemies have been doing all in their power to menace the progress of our organization. Numerous other cases of injunction and litigation have been encountered **in defending our people from prosecution and in protecting the organization's financial resources,** but we will press on, vigorously opposing under all circumstances any attempt to throttle organization by such illegal methods. We will fight to the utmost at all times to defend our **persecuted** fellow workers who are the **innocent** victims of powerful interests which would destroy the right of the men of labor to organize and enjoy the benefits thereof."

This Report was referred by the Convention to a special Committee on Officers' Reports, which after investigation reported back to the Convention recommending its adoption, which was done by the Convention without dissent (2427).

At the trial plaintiffs, in order to explain exactly what the charges were to which President White thus referred, introduced the indictments which had previously been referred to in the "Journal," with the Pleas of Guilty entered by the defendants.

These were all based solely and entirely on the participation by the defendants in unlawful acts of violence or violation of the Federal Injunction in connection with the Prairie Creek Strike.

President White in his report to the Convention refers to the proceedings as litigation in which the Union, as

such, has been engaged. The Committee on Officers' Reports also characterizes it as "litigation against the organization" (2427).

White speaks of the defendants as having been indicted and convicted in their capacity as members and **represenatives** of the Union.

No justification was possible. **The men had pleaded guilty.** Yet there is not a word of condemnation. On the contrary, White reiterates the determination of the Organization to go on with the fight against those who oppose it.

One of the Union Officers and representatives thus sentenced in their own pleas of guilty was Pete Stewart, President of District 21.

He attended the 1916 convention as a delegate from the Frogtown Local (No. 2110 of Camp Bulah), and was passed as a member in good standing by the Credentials' Committee, whose report was approved by the Convention (2425).

Stewart had meanwhile been succeeded by another President in District 21, who, however, fell out with his District to such an extent that in the fall of 1916 all the Officers and District Board Members in District 21 resigned and President White was asked to appoint temporary substitutes until an election could be held (1644, 2433).

Among the appointments made in pursuance of this request was that of Pete Stewart, convicted on his own plea of being guilty of conspiracy to violate the laws of the United States by inciting Union men to violence in the course of a labor dispute, and under sentence of imprisonment for violating a Federal Injunction during the strike.

Stewart was appointed by White as Board Member representing Arkansas, this being the field in which he had conducted what White evidently regarded as efficient and satisfactory activities on behalf of the Union. He received his salary as such from the Union for the balance of the term for which he was appointed.

Stewart was also recognized as duly accredited delegate to the District Convention of 1916, called specially to investigate charges made against the then officers of the District in misapplying Union funds in connection with litigation and expenses growing out of the Prairie Creek Strike (2436). So also was John Manick (President of Local 1565, Midland), lately out of jail, having completed the term to which he had been sentenced by the Federal Court on his own plea of guilty (2445); also Oscar Layton (2436), the distributor of the Union ammunition, who had also been convicted, sentenced and served three months on his own plea of guilty (2436). Finally McNamara himself after his release from serving his two years term in the penitentiary (2482) was received as an accredited delegate to the 1916 convention, representing Local 1526 of Hartford (2445).

The proceedings of this Convention show that there were National Organizers present, who had been sent there by President White.

In the course of the proceedings of this Convention Wm. McLaughlin, Arkansas Board Member for District 21 in charge of the Prairie Creek Strike, said to the Convention (2438):

> "I was one of that Old Board and in Hartford during the entire trouble."

Mr. Covington made a long speech to the Convention, in the course of which the following transpired (2439, 2440):

> "MR. COVINGTON:—I now speak to the members of the Old Board. Did you fellows tell me to do what I did in the Prairie Creek District?
>
> "DELEGATE STEWART:—I, for one, said go ahead, **we will protect the members of our organization that got into trouble in the Hartford Valley to the last ditch.**
>
> "DELEGATE CUNNINGHAM:—That was with the full consent of the Board.

"BOARD MEMBER MCLAUGHLIN:—Yes, sir; we told you to go ahead and we would stay with you.

"National Organizer Dalrymple:—Yes, sir; that is right."

During the proceedings at the same Convention a special committee appointed by the Convention made the following report (2440):

"SECRETARY DOUGLAS:—I have a telegram here I want to read: 'Fort Smith, Arkansas, October 2d, 1915. T. B. Douglas, Secretary United Mine Workers, District 21, McAlester, Oklahoma. Have P. R. Stewart come here on the first train, need him matter connected with parole McNamara. Also his own case pending at Denver. Have him leave there on first train. It is absolutely essential that he be here early tonight. Covington and Grant.' * * *

"DELEGATE PLYMALE:—To the special convention: Telegram received this morning from our brother now in Leavenworth, James K. McNamara, calling your attention to the fact that from some cause his pardon has failed; therefore be it resolved that this convention make another effort in his behalf, and as P. R. Stewart, being thoroughly familiar with this case, having made one trip to Washington in this brother's behalf, therefore, we, your committee, recommend that P. R. Stewart be sent to Washington at the earliest date possible and shall be allowed his salary and expenses for making said trip, and we further recommend that the District pay his railroad fare and expenses for the former trip to Washington in behalf of these brothers' pardon.

"And we further recommend that James K. McNamara be wired the action of this convention."

The recommendation of the Committee was adopted by the Convention.

The same committee also made the following report (2441):

"DELEGATE PLYMALE:—Mr. Chairman and Brothers: I will state before reading this that a portion of this resolution was covered in substance by a resolution passed a few days ago with reference to the telegram received from Brother McNamara. I want to make that statement before reading this, so that we will not get confused. (Reading).

"To the Officers and Delegates of the Special Convention: We the undersigned submit for your consideration the following bills that were contracted and paid by Local Unions No. 1526 and No. 1912, located in Hartford, Ark.:

"Same being contracted in connection with the trouble that arose at Prairie Creek, Ark., and of which bills read as follows:

"HARTFORD, ARK., Sept. 20th, 1915.

DISTRICT NO. 21 U. M. W. OF A. TO JOHN CONROY, DR.

To railroad fare to Kansas City and return..	$20.00
To street car fare from Kansas City to Leavenworth and return, including hotel bills etc.	10.00
To four days' service at $3.90 per day.....	15.60
Total.....	$45.60

"This bill is for services in connection with the presentation of petitions for the parole of James McNamara, now confined in the Federal Prison at Leavenworth, Kan., on a charge of conspiracy in connection with the Prairie Creek Trouble.

(Signed) "JOHN CONROY."

"Expenses incurred by Oscar Layton and James McNamara as a Committee elected by Local Union No. 1526 to see Judge Littl[illegible] in connection with James K. McNamara parole:

One day, Oscar Layton.....	$3.90
Transportation and hotel expenses.....	3.35
One day, James McNamara, Sr.....	3.90
Transportation and hotel expenses.....	3.35
Total.....	$14.50

(Signed) "OSCAR LAYTON."

"SEPTEMBER.

P. R. Stewart

Date	Salary			
9th	$3.90	Railroad fare one trip, return Fort Smith to Hartford and Kansas City return		$20.
10th	3.90	Two return trips		
11th	3.90	Kansas City to Leavenworth		
12th	3.90	Hotel Bills, four days	2.00	10.00
13th	3.90	Fort Smith, Little Rock	4.77	2.00
14th	3.90	Little Rock, Fort Smith	4.77	2.00
		Total Expenses		$65.04

"NOTE.—This bill is for services with getting petitions and presenting them to the proper Board in trying to get Jim McNamara out of the Leavenworth Pen, who was given two years in connection with the Prairie Creek Trouble.

"The Locals in Hartford borrowed one hundred ($100.00) dollars to help get this brother out of Leavenworth.

"Yours truly,
"(Signed) P. R. STEWART."

"The foregoing bills make it plain that they are *bona fide* claims and made in the interest of those who are members of our organization, while they cannot at this time raise their voice in behalf of themselves and therefore, the abovementioned locals made it possible for their appeal for executing clemency to reach those in authority to grant same.

"Therefore, Be It Resolved, That this convention authorize the payment of said bills hereinbefore mentioned by reimbursing said Local Union for same.

H. C. JONES, L. U. No. 197
JONATHAN FOSTER, L. U. No. 2889
ARTHUR CROSS
MAT BAYLIN, L. U. 1136
Concurred in by the Committee."

The report of the Committee was approved by the Convention.

The John Conroy referred to was the Mayor of Hartford, who had paid the fares of the Tennessee witnesses to get them home and out of the way (*supra*, p. 113 of this Brief). The Judge Little was the former prosecuting attorney who was promoted to a judgeship shortly after the Prairie Creek strike.

Another Committee Report to this Convention is also significant (2443-2444).

> "DELEGATE MCSPADEN:—The committee that was appointed yesterday evening, we your committee to whom was referred the cases of Fred W. Holt, John Mamik, Oscar Layton, John Champion, James Slankard, Bill Reed, Dave Branch, James McNamara, Sandy Robertson and Clint Burris who have served or are now serving terms in jail, we recommend **owing to the financial condition of the District,** that the claims of compensation be denied. D. G. McSpadden, James Aubrey concurring; Nat Rosetto non-concurring.
>
> * * * * * * *
>
> "DELEGATE DEGNAN:—Mr. Chairman and Brothers:—It looks very queer to me how we are going to deny the claim of the brothers that laid in jail for six months. It was threshed out that they were entitled to it. We are complaining about Prairie Creek being exposed here at one time by the speech of our able lawyer, and you put in the records yesterday, putting a man on the pay roll, and you went on record as giving him pay until he gets a job, and he doesn't get it from the company, and here we have five or six brothers that laid in jail and get nothing at all. I think it is a shame that they don't give those brothers what they are entitled to. If you want to know the whole truth and go that far into it, you can get it, all right. Maybe you don't want to hear it.

"CHAIRMAN THURSTON:—WE DON'T WANT IT.

"DELEGATE DEGNAN:—I want this convention to pay the brothers wages while they were in jail, they are entitled to it. They went to jail and suffered six months, I understand, and now they want the little wages that they are entitled to, and we are not treating them fair. I am in favor of those brothers getting what they asked for, their wages while in jail."

The Committee report was finally concurred in by the Convention and the compensation to the imprisoned men denied, **solely on the ground that the financial condition of the District did not warrant it.**

See Aetna Indemnity Co. & Ladd 135 Fed. 636.

Even more conclusive of the responsibility assumed by the organization for the Prairie Creek Strike is found in the published reports of the Treasurer of District 21 during the period immediately following it.

The Secretary-Treasurer for the period from April 1 to September 30th, 1914, was Fred Holt, one of the men sentenced on his own plea of guilty (2482). In his report for that period we find the following (2468):—

" Expense of Prairie Creek Strike.

Webb Covington, attorney fee	$3,137.63
Ben Cravens, attorney fee	1,120.75
Bob McFarlane, attorney fee	995.25
Court Costs in Injunction Case.	
Expense of witnesses, etc	6,696.01
Merchandise, tents and supplies for **strikers** and their families	7,637.78
P. C. Hendricks, stenographer, transcribing evidence in injunction cases	220.45
William Wellshear, transcribing evidence in injunction cases	50.00
Thomas M. King, District Organizer, salary	612.30
Railroad and other expenses	678.62
National Organizer	810.26
K. C. Adams, publicity agent	454.63
K. C. Adams, special account	25.24

Included in the item of $7,637.78 entitled "Merchandise, tents and **supplies** for strikers," were evidently the 55 high power rifles and 8830 rounds of ammunition which plaintiffs were able to prove that Holt had bought and paid for with Union checks signed by him as Treasurer and countersigned by Pete Stewart as President, the stubs of which showed the entry "Strikers tents and supplies" (1928) the checks, however, being delivered to the hardware-dealers in payment for guns and ammunition (1836-1837, 1695).

It will be noted that the legal expenses, etc., above set out are not merely in connection with a past strike, but are the expenses in the injunction suit tried May 8, 1912, while the intimidations were still going on.

Plaintiffs in error make much of the fact that these expenses were paid out of the District and not the National Treasury. The money, however, all belonged to the United Mine Workers of America whether it was in the Home or Branch Bank account, and the Executive Board had at all times power to take it into its own Treasury (see *supra* pp. 21 and 23 hereof.)

In any event the shifting of the liability from the National Association to the District will not relieve plaintiffs in error from paying this judgment, since the *supersedeas* bond covers both organizations.

In the Treasurer's Report for the next six months' period, October 1st, 1914, to March 31st, 1915, under the heading "Donations to Legal Battle in Defense of Prairie Creek **Strike**" are the gifts from a long list of Local Unions which had had no direct part in the trouble, a number of them being from Districts outside District 21 (2470).

The same report under the head of "Defense Fund," claimed credit for the following disbursements (2470):—

"Aid L. U. 1565, Midland	$7,386.00
Aid L. U. 340, Midland	3,405.50
Aid L. U. 2110, Midland	3,453.00
Aid L. U. 2494, Midland	3,043.50
Aid L. U. 1912, Hartford	108.00
Special aid to Hartford	543.50
Fred W. Holt	30.00

Legal services, court costs, legal expenses and supplies for **strikers** in Hartford Valley	12,205.73
Webb Covington, attorney	2,068.46
Hartford Valley expense, cost of filing papers for appeal in contempt case	715.00
Guy Williamson and P. C. Hendricks, transcript fee	419.15
Fred W. Holt	74.78
R. W. McFarlane	672.35
Committee work at Hartford	1,146.10
Slankard and Stroupe case	37.40"

The next six months' report, covering the period from April 1, 1915, to September 30, 1915, also contains entires of significant disbursements.

Under the title "Defense Fund" we find the following (2471):—

"Meals for men in jail and supplies and FINES	$8,994.80
To Fred Holt	39.00
Aid to James Crossley	42.00
Aid to James McNamara	27.00
James Slankard	65.00"

Again in the report of October 1, 1915, to March 31, 1915, we find disbursements paid for the "Defense Fund" as follows (2472):—

"P. R. Stewart, services on pardon case for James McNamara	$174.70
Klinger's Cafe, meals for men in jail, Prairie Creek trouble	18.50"

Under Article X, Section 1, of the Constitution of District 21, the Defense Fund is available only for the aid of members engaged in strikes (2842).

This report also shows that James Crossley, who wrote the threatening letter to Judge Youmans, was placed on

the Union Pension List four days after he came out of jail and was kept thereon thereafter (2467, 2472).

The most significant feature of the foregoing extracts is the conclusive proof that the Union voluntarily undertook the entire expense of defending the Injunction Proceedings, the Contempt Cases, and finally the Criminal Prosecutions, although the Union itself was not a party to any one of these proceedings, which were directed exclusively against the individual participants.

See Allis-Chalmers Co. *vs.* Iron Moulders' Union, 150 Fed. 155, 163–164.

If as the Union would now have it appear, these men had acted on their own initiative and not with the authority of the Union, to serve its purposes, why did it spend its funds in defending them?

If the Union suggests that it was to protect them from persecution, why, we ask, was it necessary for this purpose for the Union to pay the fines to the amount of $7500 which were imposed in the Criminal cases on the defendants own pleas of guilty (2471, 2484)?

The disbursements above shown are in themselves a complete ratification by the Union of the illegal acts of its "members and representatives."

The associate action by the Local Unions which participated in the trouble, is to be same general effect. Moneys were collected for the "boys in jail," and funds subscribed to secure their pardon (2450–2452, 2465–2467).

Additional Union Action Indicating Union Approval of Acts of Participants.

There are very few cases where Labor Leaders plead guilty.

Usually they deny everything and in such case their associates, having the right to give them the benefit of the doubt, may properly support them until they are proved

guilty. Even after conviction there is the appeal and the cry of a miscarriage of Justice.

In such a case their continuance in the Union cannot be said to be a conclusive ratification by the Union of their illegal acts, since the latter are denied.

In the case at bar, however, Burris, Robinson, Stewart, Holt, Crossley, Champion, Branch, MacNamara, Slankard, Layton all pleaded guilty to the criminal charges. Even from the jail sentences under the contempt proceedings (which were based on the same facts as the criminal cases) only Stewart took an appeal. While, after affirmance of his sentence by this Court, Stewart secured a pardon from the President, this amounted in law to an admission by him of the justice of his conviction.

Burdick *vs.* U. S., 236 U. S. 79, 94.

The Records of District 21 and of the various Local Unions (or such of them as we were able to secure for the trial) are full of offices, honors, benefits and pensions given to the men who on their own confession had flagrantly violated the law in furtherance of the objects of the Union in the Prairie Creek Strike.

It is also significant that the minutes of the Executive Board of District 21 were never produced (2503–2504), although the members of the Board testified that such minutes had been kept (2752, 2758).

So also the books of certain of the Local Unions which took the most prominent part in the affair were never forthcoming, and those that were produced had pages torn out and passages erased between the most significant dates (2449, 2465, 2466–2467).

This action by the Branches of the Union of which the guilty men were members, conclusively disproves any possible contention by the defendants that the injury to plaintiff's business and property was not done by the Union for Union purposes but was a spontaneous popular outbreak with which the Union had nothing to do.

Not one of the acknowledged participants was ever

officially reproved by the Union, or in any way fined or disciplined or expelled or even suspended from membership.

In fact President White testified that at no time during his entire connection with the Union had he ever known of any disciplinary action having been taken by any officer of the National Organization against any National Officer or employee or member of the Union or against any District or Local Officer or employee, or against any District or Local Branch, on account of violence or injury to life or property in labor disputes, and that he knew of no instance in which the Union had given publicity in the "Journal" or otherwise to any notice to the members that they would be subjected to any discipline by the Union if they participated in such violence (480–482).

The only approach to such a notice which White could recollect was prior to his Presidency, when, during the Alabama strike in August, 1908, a circular was issued to the membership of the Alabama District stating that violence and disorder were the Union's worst enemy and admonishing the members to observe the law (482, 498).

Even in this circular, however (to which White could recollect no counterpart since 1908), there was no statement that any member disregarding the admonition would be fined, suspended or expelled by the Union, nor was any such action ever taken by the Union. It was obviously intended merely to put the Union straight with the public and to give the Organization a ground for stating that any violence which occurred was not of its making.

Such insincere protestations of innocent and virtuous intention, not followed by the effective action which the Union had it in its power to take, were like the German submarine notes, publicly proclaiming the best of intentions, but saying between the lines to every submarine commander that if he should happen to do it again, he, too, might privately receive the iron cross.

We have heretofore called attention to the testimony of McLaughlin, the District 21 Board Member in charge of the Prairie Creek strike, who said that while it was the practice of his organization to discipline any members of the Union who violated its constitution, no such action was ever taken against a member merely for engaging in strike violence, the abstinence from which was not evidently regarded as part of the basic principles on which the Union was founded or conducted, or of its organic law (2744–2745).

The Record in this case is full, not only of inaction by the Union in neglecting to discipline such members, but of affirmative action discriminating in favor of such members by paying benefits and pensions to them and their families and by appointing them to positions of trust and influence in the Organization.

A partial summary of such instances is given in the tabulation at the end of this Brief. (Appendix D.)

4. Acceptance by the Union of the Benefit to it from the Destruction of Plaintiff's non-Union operation.

It would seem unnecessary at this point to enlarge on this subdivision of Proof of Intent. It has been referred to in connection with the discussion of the other headings. On May 4th President White boasted to his Executive Board that as a result of the riot of April 6th the Bache mines "have been idle ever since." (2390.)

This boast holds good to the present day.

The plaintiffs have been ruined, their mines destroyed, **and they have never again been able to operate on an open-shop basis.**

They were intended to continue as a living example to all those who presume to oppose the will of the exponents of the gospel of brute force.

The Union has taken the benefit of the acts of its members and representatives in forcing the closing of this open-shop operation, acts done for the express and sole purpose of securing such benefit to the Union.

The responsibility of the Union necessarily follows.

5. The Failure by Defendants to Expel or Discipline Members Known by it to have Participated in the Illegal Acts Causing the Destruction of Plaintiff's Business and Property.

The evidence on this heading has already been discussed. The Record shows not only no evidence that any Union participant was expelled or disciplined by the Union, but shows affirmatively that none was. On the contrary, all the ringleaders were rewarded.

The legal effect of such action or inaction by the defendant Association is discussed hereafter under Point Fourth (*infra*, pages 226–237).

Specific Reply to Points in Brief of Plaintiffs-in-Error.

In so much as we have not found it advisable to group our argument on the liability of the Union under the same heads and sub-heads as plaintiffs-in-error, before developing our argument we will state categorically our reply to each of the Points argued by the other side.

> "First.—This Court has jurisdiction of this writ of error."

Not disputed.

> "Second.—The Court below erred in holding that an action could be brought, process had and judgment recovered against unincorporated labor unions, either the United Mine Workers of America, or District 21, or the various local unions named in the complaint, in an action under the Sherman Anti-Trust Act."

The present suit is not directed against the members of the Union individually, except as to those specifically named as defendants, but against the Union as an Association, which has been personified by the Sherman Act for the purpose of responding in damages for its violation.

The Sherman Act gives a remedy against unincorporated associations in the form of labor unions organized as are defendants, for treble the damage caused by their violation of the provisions of that Act. A remedial statute, all-embracing in its scope, it provided in Section 7 a new remedy in the Federal Courts against any person violating the Act, and by Section 8 defined the word "person" not (as plaintiffs-in-error construe the provision) to include merely "corporations and associations organized under the laws of any of the States and the United States", etc., but to include "corporations and associations **authorized by or existing under**" such laws.

The purpose and meaning of this clause was to make the remedial provisions of the Act as sweeping and far-reaching as its prohibitory sections, and to include as parties against whom the remedy was directed **all** corporations and associations, no matter where or how formed, whatever be the legal procedure employed in their organization.

The statutes of certain of the States in which the United Mine Workers have active District Branches specifically **authorize** the formation of trade unions by the association of laborers, without the necessity of statutory incorporation, and give to such associations qualities and benefits not possessed at common law. The United Mine Workers is an association **"authorized by"** the laws of such states.

The Clayton Act and other Acts of Congress, as well as the statutes of each of the eighteen states in which the United Mine Workers carries on its business by means of active District Branches, specifically recognize Labor Unions as existing therein and give to them rights, privileges and benefits in addition to those possessed at common law. The laws of twenty-five other States and Territories in which the United Mine Workers have at present no active organization also contain such laws.

It is immaterial whether the word "laws" refers to statutes or to statutes plus common law, since in any event, in view of the above legislation, the United Mine Workers is an "association **existing under or authorized by** either the laws of the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

The method of serving the Associations was that prescribed by the Arkansas Code.

"THIRD.—Recovery against the United Mine Workers of America was entirely unwarranted by the evidence."

"I. A labor union, as such, is not within the Sherman Anti-Trust Act."

Covered also by the answer to the second point.

We do not dispute the right of workingmen to form labor unions or question the decided advantages to the community from such unions when legitimately conducted.

There is no attempt, by these proceedings to hold the "hundreds of thousands of members throughout the country", personally responsible for the injuries alleged, or to take away the homestead from the innocent miner in Wyoming or Pennsylvania, but simply to recover, to the extent of about $1.15 per member, from the associate treasury a part of the fund contributed by the members to carry on the activities of their association, the administration of which they have collectively intrusted to the officers who have brought about the injury sued for.

> "II. The constitution of the United Mine Workers of America is the agreement of membership. It fixes the terms upon which these miners unite and contribute to the funds which the judgment below turns over to the defendants in error. The constitution and the objects of the association are entirely lawful."

The lawfulness of the constitution and objects of the association are not questioned so long as these objects are attained in a lawful manner.

This constitution has heretofore been analyzed (*supra.* pp. 14–31).

Under it the District and Local Branches are agencies, created by the National organization to carry out its objects and are subject always to its control. These Branches are but a part of the association, their officers are its officers, their funds its funds, and their acts its acts.

By the constitution, the District Branches are specifically authorized to order Local Strikes "on their own responsibility," without first consulting and getting the sanction of the National Executive Board. The word "responsibility" is not here used, as plaintiffs in error contend, in the sense of "liability" but of "initia-

tive." The purpose and effect of the provision is to enlarge the power of the Districts and not to limit it. There is here no attempt to restrict the liability of the National Association nor would such an attempt be legally effective if intended.

The strike at Prairie Creek was a Local Strike ordered by District 21 by authority of the National Constitution.

> "III. The United Mine Workers of America did not authorize, participate in or ratify the alleged acts committed in Arkansas by reason of which the recovery of damages was allowed."

The National Association both authorized, participated in and ratified such acts.

Through the national officers and the official journal it actively encouraged the district and local officers and members, the agencies which it had created to carry on its Arkansas business, to continue and make effective the flagrantly unlawful methods which they were employing there, to protect the Union in other States, by destroying plaintiff's business and property and thus keeping the plaintiff's open shop coal from being shipped to such other States in competition with Union mined coal there produced.

This association is liable for torts committed by its authorized agents in the course of their duties and ratified by its delegated officers and by its membership in convention assembled, just as are corporations.

> "IV. Notwithstanding the provisions of the Constitution of the International Association, and notwithstanding that it did not authorize, participate in or sanction either the 'strike' or the alleged wrongful acts in Arkansas, liability has been predicated in the view that these acts in Arkansas were committed in carrying out the 'aims, objects and purposes' of the national organization."

The foregoing is not the basis of but merely one of the steps in the conclusion reached by the court below, which

was rested on a finding of authorization, active participation and ratification as well as on the fact that "it is established beyond question that the property of the plaintiffs was burned and their mines destroyed in the course of the strike, for the purpose of carrying out the aims, objects and purposes of the national organization."

While such objects were lawful and might have been attained in a lawful manner, the means adopted by the authorized agencies of the association and encouraged and approved by it were unlawful in the extreme,—intimidations, assaults, arson and murder.

> "FOURTH.—The verdict was also unsustainable with respect to District 21."

Covered by the answer to Third.

Furthermore, the contention by plaintiffs-in-error that the National Association is not liable for the acts of District 21, merely places the liability in the District, which is a party to the supersedeas bond.

The connection of District 21 with the Prairie Creek strike was even more direct than that of the National Association.

> "FIFTH.—The facts proved at the trial did not justify a recovery against any of the defendants under the Sherman Anti-Trust Act. There was no proof of any combination or conspiracy in restraint of interstate commerce."

The verdict of the jury is conclusive that plaintiffs' business and property were destroyed by defendants for the sole purpose of preventing plaintiffs from shipping their coal to other States in competition with that there mined with Union labor.

Plaintiffs-in-error confuse intention with motive.

While defendants' motive may have been to increase their wages and lessen their hours of labor, their intent was to restrain interstate commerce.

It is entirely immaterial that in destroying our mines the immediate participants did not have the Commerce Clause in mind. What is important was their collective

intention—to restrain us from shipping our coal to other States.

While mining and production are not interstate commerce, the shipment of coal is, and it was to prevent the latter that the injuries were committed.

When the specific intention to restrain interstate commerce is found, every means used to attain that end is a direct interference, whether that means be the destruction of the means of production, or, as was the case here also, the burning of coal cars loaded and consigned to other States.

"SIXTH.—The District Court erred in its instructions to the jury."

The Trial Judge did not so err—

(1) The instructions given were proper.

(2) No proper exception was taken.

The Act of Feb. 26, 1919, does not dispense with the necessity of a timely exception designed to give the trial Judge opportunity to correct his ruling, but merely prevents a reversal on account of immaterial errors to which proper exceptions were taken.

(3) The facts justified a binding instruction for plaintiffs on the points of fact covered by the supplemental charge.

"SEVENTH.—There was a misjoinder of plaintiffs and their causes of action, the complaint failing to show any community of interest on the plaintiffs or any joint cause of action."

This alleged error is precisely the kind covered by the Act of February 26, 1919.

The suit was properly brought and prosecuted under the practice of Arkansas, which, by the Conformity Act, controls the procedure in the Federal Courts, no Federal Statute conflicting therewith.

EIGHTH.—The orders requiring the production of the books and papers did not violate the constitutional rights of the defendants or their officers.

NINTH.—The judgment should be affirmed.

POINTS.

We present the following points.—

FIRST.—The Sherman Anti-Trust Act gives a right of action for its violation against an unincorporated Labor Union.

SECOND.—An unincorporated labor union is an "Association authorized by the laws" of certain of the States; it is an association existing under the laws both of the United States, of all the States in which it carries on its activities as well as of Canada where it also has an active branch, which laws give to such an association rights and benefits not possessed by it at common law.

THIRD.—The procedure employed in bringing defendants into Court was both derived by clear and necessary implication from the Sherman and Clayton Acts and is that prescribed by the Arkansas Code.

FOURTH.—The United Mine Workers of America, acting through its National Officers and its Official Journal, as well as by its duly authorized District and Local Branch Agencies, authorized, caused, participated in, encouraged, ratified and approved the destruction of the business and property of defendants-in-error.

FITTH.—The destruction of the business and property of defendants in error was accomplished in the course of an unlawful combination and conspiracy in restraint of Interstate Commerce.

SIXTH.—The trial Judge did not err in his supplemental instructions to the jury.

(1). The instructions were proper.

(2). No proper exception was taken by defendants.

(3). The facts justified binding instructions on the matters as to which the trial Judge expressed his opinion.

SEVENTH.—There was no error in the joinder of parties or causes of action.

(1). The alleged error was not substantial.

(2) The question was not properly raised.

(3). There was no misjoinder.

EIGHTH.—There was no error in the requirement of the production of the association's books and papers.

NINTH.—The judgment should be affirmed.

FIRST. **The Sherman Anti-Trust Act Gives a Right of Action for its Violation against an Unincorporated Labor Union.**

The crucial question for decision by this Court, is the right to make the United Mine Workers of America, an unincorporated association, a party defendant in its associate name, or through its representative officers, to a suit for damages under the Sherman Anti-Trust Act, and, after final judgment, to attach its associate funds in satisfaction thereof.

On the decision of this question, which in its essence is one of procedure merely, depends the effectiveness of the remedy given to persons injured in this class of cases by the violation of the Anti-Trust Act.

The Danbury Hatters Case (208 U. S. 274) has settled the question that when Congress forbade **every** combination or conspiracy in restraint of Interstate Commerce, it meant **"every"** such combination and not "every combination except combinations of laboring men."

In that case the Union itself was not made a party to the suit, which was directed solely against individual members of the Union who had participated in, sanctioned or ratified the unlawful acts complained of, and who were men of substance, real estate belonging to them sufficient to satisfy the judgment having been attached at the institution of the suit.

The claim for exemption from liability to suit on behalf of the United Mine Workers is based solely on the ground that the law furnishes no remedy against them and no method of procedure to make their associate property liable for the damage done by them, by means of that very associate property, in pursuance of their associate objects.

Their position is apparently this:—

Granted, though reluctantly, that the Act applies to combinations of laborers who burn and dynamite property to keep it from interstate shipment; granted that this defendant has violated the Act and in so doing has

destroyed plaintiff's business and property; granted further that Congress intended to give an effective remedy to the party so injured against those who did the damage; although the Federal Court can declare unlawful the combination, as conducted, and enjoin its further violation of the Act, and although under Section 6 the United States can forfeit its associate property in the course of interstate transportation, yet its associate funds are immune from process to satisfy the damages **which the use of these very funds have caused,** merely because the Union has not seen fit to incorporate itself and thus become subject to the law.

No matter how outrageously the Union may violate the law, no matter how completely and effectively it may restrain interstate commerce, acting as a unit, as an association, and employing its vast collective power and resources illegally to destroy life and property for the sole purpose of furthering the collective interest of the Association, burning and dynamiting the means of producing the necessities of life in order to prevent them from coming into interstate competition with articles produced under Union domination, yet it contends that these same Union funds **which were used to cause the damage** cannot be made to pay for it, simply because the Association refuses to become formally incorporated.

According to the contention of the Union in this case,—stated by it in its petition to this Court for Writ of Prohibition (Suggestion for Writ, January 1917, pp. 10–11) as essential to the preservation of its "unified power and strength" and for the successful continuance of its "activities"—no degree of effective unified action which such an incorporated association may attain is sufficient to render its associate funds liable for the unlawful injuries which, in its associate capacity and to attain its associate ends, it may inflict on other people.

This Union is in fact organized in a form far more effective for unified action than is the case with most corporations.

It has innumerable delegated officers, with deputies subject to their exclusive direction, all agencies of the main organization employed solely to do its bidding in the furtherance of its interests.

It has vast funds,—as far back as 1906 it had more than $2,500,000 in its treasury—, which funds in the hands of unscrupulous men may be devoted exclusively to harming innocent people by restraining and destroying interstate trade.

Must these injured citizens rely for their remedy on the financial responsibility of the irresponsible and for the most part misguided members, who do the actual burning, killing and destruction, provided the victims can prove exactly which particular members did the damage?

The Union would have its responsibility, its liability to suit, depend not on whether its organization is **in fact** bound together as a unit for effective associate action, but merely on whether by its failure to take out a State or Federal Charter,—a mere formality, which would not change by one iota its essential organization—, it chooses not to become subject to the law.

It would make as the test of its responsibility not what it is, but what it wishes to be considered.

Certainly a construction of a remedial statute which will produce such a result is not to be adopted unless the language of the Act is so clear as to bear no other interpretation.

For convenient reference, we have printed the entire text of the Sherman Act as Appendix B (page 324 hereof). Sections 7 and 8 of that Act are as follows:—

> "SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this Act, may sue therefor in any Circuit Court of the United States in the district in which the defendant resides or is found, without

respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

"SEC. 8. That the word 'person' or 'persons,' wherever used in this Act, shall be deemed to include corporations and **associations existing under or authorized by** the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

When Congress expressly included in its definition of the "person" against whom suit might be brought, corporations **or associations existing under** or authorized by State or Federal laws, it obviously intended to make the test of liability not the volition of the parties liable or the ingenuity of the attorneys who organized them in a particular form of Association, but the actual existence of such an Association in a form sufficiently tangible to commit a violation of this Statute in its associate capacity.

The provisions of the Sherman Act were made by Congress so all embracing that the ingenuity of the greatest lawyers which the country has produced has been unable to find a means to do what the Act forbids and yet escape responsibility therefor.

Section 1, defining the things declared illegal, attempts no specification, but includes "**every** contract, combination in the form of trust **or otherwise,** or conspiracy," which produces the unlawful result,—restraint of interstate commerce.

Sections 7 and 8 which give the remedy, do not confine it to suits against corporations and individuals subject to suit at common law, or to corporations and associations organized under statutory authority; they include not only associations organized under State or Federal law, but also those **authorized by** and those actually **existing thereunder.**

Here is a statute evidently drawn with the very idea of

making it impossible for those violating it to escape responsibility by technicalities.

If they do what the Act forbids, no form of organization can shelter them.

From Sections 1, 2 and 3 there are no exceptions.

Under Sections 4 and 5, authorizing the Federal Courts to prevent and restrain violations of the Act, the Courts have frequently exercised the power thus given by dissolving the unlawful combination, whether in a corporate form like the Northern Securities Company, or in the form of an unincorporated association such as the Transmissouri Freight Association or the Joint Traffic Association.

The associate property of such an illegal combination, however organized, is forfeitable to the United States under Section 6.

Under Sections 7 and 8, if the Association actually exists in a form sufficiently tangible to do the damage, its associate funds are made available to pay for it, particularly where, as here, such associate funds were used to cause the injury.

Section 5 of the Clayton Act provides "that a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the Anti-Trust laws to the effect that **a defendant** has violated said laws shall be *prima facie* evidence against **such defendant** in any suit or proceeding brought by any other party against **such defendant** under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto."

So far as we know no question has ever been raised of the propriety of joining as a party defendant to such suits by the United States, any unincorporated association which itself constituted the combination violating the law.

Indeed the decisions of this Court in two of the leading Anti-Trust cases bear the names of unincorporated asso-

ciations,—U. S. *vs.* Transmissouri Freight Association and U. S. *vs.* Joint Traffic Association. One of the Circuit Court decisions cited with approval by this Court in the Danbury Hatters Case was U. S. *vs.* Workingmen's Amalgamated Council, 54 Fed. 994.

See also cases discussed hereafter on pages 229–237 hereof.

Under Section 5 of the Clayton Act the decree of the Court in such a case would *prima facie* bind **such defendant** in a subsequent civil suit.

This provision of the Clayton Act sustains the common sense interpretation of the Sherman Act and the interpretation which will carry out the obvious intent of Congress to give a real and effective remedy to persons injured by its violation,—that where an association exists in a form sufficiently tangible to cause, and to be found guilty of, a violation of the Act, its associate funds can be made answerable in a civil suit for the injuries sustained.

If the Association exists to do the damage, its associate funds also exist to pay for it.

All that is necessary to hold an association liable for damages under the Sherman Act is to show its existence in some form sufficiently tangible to enable the Court by its process to reach its associate property.

It cannot take advantage of its associate and combined existence to harm other people in the manner forbidden by the statute, and not at the same time have such associate funds subject to its provisions.

The important thing is not whether the combination is in the form of a statutory entity, but whether it has taken the form of a tangible association, which has used its associated funds, its group powers, its ability to act through delegated representatives, in other words, ITS COMBINED EFFECTIVENESS, **to the injury of the plaintiff.**

SECOND.—**An Unincorporated Labor Union is an "Association Authorized by the Laws" of Certain of the States; it is also an "Association Existing Under the Laws" both of the United States, of all the States in which it Carries on its Activities, as well as of Canada where it has an Active Branch, which Laws give to such an Association Rights and Benefits not Possessed by it at Common Law.**

The ordinary and accepted legal way of describing a corporation or association which has obtained corporate or quasi corporate existence as a distinct legal entity under a Federal or State Statute, is by the phrase "**organized and** existing under the laws of the States or of the United States."

It will be noted that in Section 8 of the Sherman Act, defining the parties liable to suit for damages, Congress does not use the words "organized under," but the broader phrase "authorized by." It will be further noted, that the language is not "authorized by **and** existing under," but "existing under **OR** authorized by."

Since a corporation can exist as such only by virtue of a statute, as applied to corporations the provision would have had substantially the same effect, whether Congress had used the words "organized under," "authorized by" or "existing under" State or Federal laws.

Associations, however, may be of three types:—

(1) A quasi-corporation, organized pursuant to a statute, to which it owes its powers and its very existence;

(2) An association formed at common law but with the express sanction of a statute authorizing it so to be formed;

(3) An association formed at common law which, while not expressly authorized by statute, yet is recognized by statute as properly existing and is given statutory rights and benefits not enjoyed at common law.

The above distinction is clearly brought out in Elliot vs. Freeman, 220 U. S. 178, hereafter quoted.

In the first place there may well be a clear distinction between an association **"organized under** the laws of a State" and an "association **authorized by** the laws of a State."

In the one case the association would be formed by virtue of the statute and would owe its entire existence thereto.

In the other case the association might be formed at common law with the **express sanction** of a State statute.

One of the three States over which District No. 21 of the United Mine Workers extends and in which the national organization, through its branch agency, District No. 21, carries on its activities, is Texas.

Chapter 2 of Title 77 of the Texas Code (III Vernon's and Sayles' Digest, page 3438), is entitled "Labor Organizations" and Article 5244 of this title is as follows:

> "Article 5244. Right to Organize—**It shall be lawful for any and all persons engaged in any kind of work or labor,** manual or mental, or both, **to associate themselves together and form trades unions** and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service, in their respective pursuits and employments."

In Pennsylvania also, where the United Mine Workers have five active district branches, the Act of May 8, 1869, P. L. 1260, makes it

> "lawful for any and all classes of mechanics, journeymen, tradesmen and laborers to form societies and associations for their mutual aid, benefit and protection and peacably to meet, discuss and establish all necessary by-laws, rules and regulations to carry out the same."

The Pennsylvania Act of June 16, 1891, P. L. 300, is to the same effect.

Here, therefore, we have statutes of two of the States in which the United Mine Workers carries on its activities, in one of which is located District 21, **specifically authorizing the formation and existence of unincorporated labor unions therein.**

Since the Sherman Act does not use the words "organized under" but the words "authorized by," it would be impossible to imagine how, in the face of these statutes, it can possibly be argued that the United Mine Workers was not "authorized by the laws of **any** State."

The Act, it will be noted, does not read the "laws of the several states," but "the laws of **any** State."

The Sherman Act, however, uses not only the words "authorized by" but also the words "existing under" and that in its disjunctive. This phrase "authorized by **or existing under"** makes the inclusion of unincorporated labor unions clear beyond a doubt.

In practically every state in the United States, including all of the States in which the United Mine Workers has active district branches, there are statutes distinctly recognizing trades-unions as **existing** thereunder, and giving them a standing and protection in connection with their associate rights and interests.

The most noticeable instance of such statutory recognition is the provision in Section 6 of the Clayton Act, quoted by the Circuit Court of Appeals, that "nothing contained in the anti-trust laws shall forbid the **existence** and operation of labor * * * organizations."

Indeed this provision might well be said to constitute a direct authorization by Congress of the organization and continued existence of labor unions.

Certainly it is a distinct recognition that such associations were among those "existing under the laws of the United States" within the meaning of the Sherman Act.

The Clayton Act is relied on by the other side as exempting labor unions from liability under the Anti-Trust Acts.

It was intended by Congress to have no such effect.

All that Section 6 of the Clayton Act was designed to do was to allay the fears and put at rest the repeated statements of Mr. Gompers and the other labor lobbyists that the Sherman Act, as construed by certain Courts and United States Attorneys, subjected labor unions to prosecution and suit not only for unlawful activities in direct restraint of interstate commerce, but also on account of their very existence.

Sections 6 and 20 of the Clayton Act have frequently been referred to by Labor Leaders as Labor's Bill of Rights.

An examination of the proceedings in Congress preceding the passage of the Clayton Act shows that it is, as its language purports to make it, a Bill of Rights, and not a Bill of Special Privileges.

Believing that the report of the Conference Committee submitting the Clayton Act for passage and certain of the debates in the Senate and House on the Bill are instructive as showing the purpose and scope of the Act, but not desiring to cumber the body of the brief herewith, we have reproduced such pertinent extracts in an appendix hereto (Appendix A, p 305).

These extracts show clearly that the scope of the Clayton Act was intended to be as limited as its language would indicate.

There was no thought in the minds of Congress to authorize, or to prohibit the Courts from restraining, illegal acts, causing damage to life and property.

Lamar *vs.* U. S. 260 Fed. 561 (*certiorari* refused 250 U. S. 673).
U. S. *vs.* Norris, 255 Fed. 423.
Kroger Co. *vs.* Retail Clerks' Ass'n., 250 Fed. 890.
U. S. *vs.* King, 250 Fed. 908.
Montgomery *vs.* Pacific El. Rwy. Co., 258 Fed. 398.
Dail-Overland Co. *vs.* Willys-Overland, 263 Fed. 171, 185.
Kinloch Telephone Co. *vs.* Local Union No. 2, 265 Fed. 312.

It was not intended to change or restrict the Sherman Act, but merely to allay the fears of the labor leaders that it would be extended to prevent their legitimate activities.

As applied to the present case, where the labor union has employed unlawful and criminal means for the purpose of doing the very thing forbidden by the statute, the only effect of the Clayton Act is to make it entirely clear that the commission of such acts by a labor organization was one of the very things to which the Sherman Act was designed to put a stop and for which it intended to provide an effective remedy.

It clearly recognizes labor unions, incorporated or unincorporated, as existing under the laws of the United States and hence as one of the "persons" made liable to treble damages under Section 7 as defined in Section 8.

It also clearly contemplates such an association as a proper party defendant in proceedings instituted by the United States and hence as one of the parties against which such a decree will be *prima facie* evidence in a subsequent civil suit.

The declaration that labor is not a commodity or article of commerce is not an enactment or statement of law but merely an attempt to state a fact.

One of the principal difficulties with the labor leaders is their inability or refusal to recognize the difference between the status of a laborer or a labor union in dealing with the agreement or refusal of men to work, and which may or may not directly affect interstate commerce, and their status when they expand their activities to the extent of intimidating, assaulting or murdering their fellow workmen, and burning or dynamiting their employers' property.

Whether or not the labor of a human being is a commodity or an article of commerce, certainly coal loaded in a railroad car and consigned to another state is both.

Another principal point on which the logic of the labor advocates fails is the refusal to recognize the distinction in law between the arithmetical sum of a number

of acts, of no legal weight considered separately, and the aggregate of such acts as part of a conspiracy.

As so clearly stated in Aikens *vs.* Wisconsin 195 U. S. 194, 205, and quoted in the Danbury Hatters Case 208 U. S. 274, 299:—

> "No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected acts or omissions may be made a step in a criminal plot, and if it is a step in a plot neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law."

See also Gompers *vs.* Buck Stove & Range Co., 221 U. S. 439.

In the present proceedings no attack is made on the existence or operation of the United Mine Workers lawfully along the legitimate lines provided in its constitution. In carrying out the object and purpose of the association it has deliberately and flagrantly violated the law.

Certainly, the last clause of Section 6 was not intended to exempt a labor organization from responsibility for such a wrong—clearly, it must be read in connection with the balance of the sentence, as applicable only so long as such organizations and members are "lawfully carrying out the legitimate objects thereof."

It will be noted that this last clause covers not merely the organizations themselves, but "the members thereof." To hold that this clause took labor unions from without the application of the Sherman Act, no matter what they do, would necessitate the conclusion that under no circumstances could a member of such a union be found guilty of or liable for violating that Act. The mere membership in such an organization would thus give, to any one enjoying the same, a sort of ambassadorial immunity from prosecution or suit, which trust organizers might eagerly and easily acquire.

The obvious answer is that neither a labor union nor

a member thereof is guilty or innocent of violating the Act because it is a union or a union member, but merely because it or he does things which unreasonably restrain interstate commerce.

The material thing is not what the defendant calls itself but what it is capable of doing and does in fact do.

As applied to the case at bar, therefore, effect of the Clayton Act is, first, to make it clear that the proper **existence** of labor unions, legally exercising their proper functions by lawful means, is sanctioned and thus impliedly authorized by Congress; second, to recognize, by the clearest implication, that an unincorporated Labor Union is one of the associations "existing under or authorized by" Federal and State laws, as described in the Sherman Act.

Congressional recognition of the existence of trades-unions, similar to that by the Clayton Act, as well as their liability to prosecution as such by the United States for violation of the Sherman Act, is found in the rider to the Appropriation Act of August 1, 1914 (38 Stat. at L pp. 53, 652, 886), providing that no part of the appropriation be "spent in the prosecution of **any organization** or individual for entering into any combination of agreement having in view the increasing of wages, shortening of hours or bettering the conditions of labor, or for any act done in furtherance thereof, **not in itself unlawful.**"

Certainly the obvious inference from this provision is that if a Labor Union should, in furtherance of a conspiracy to restrain interstate commerce, in fact do **acts in themselves unlawful,** these funds thus appropriated were to be spent in prosecuting it **as an organization.**

The National Trades Union Act of June 29, 1886, (24 Stat at L 86) is to the same effect. Section 1 of this Act is as follows:—

"SECTION 1. ('National Trade Unions' defined.) That the term 'National Trade Union', in the

meaning of this Act, shall signify any **association** of working people having two or more branches in the States or Territories of the United States for the purpose of aiding its members to become more skillful and efficient workers, the promotion of their general intelligence, the elevation of their character, the regulation of their wages and their hours and conditions of labor, the protection of their individual rights in the prosecution of their trade or trades, the raising of funds for the benefit of sick, disabled, or unemployed members, or the families of deceased members, or for such other object or objects for which working people may lawfully combine, having in view their mutual protection or benefit."

This Section aptly described the United Mine Workers of America as it now exists under its own peaceful and innocent description of itself.

Section 2 of the Act then goes on to provide that a National Trades Union, on filing its Articles of Association, may become a corporation, with the usual attributes incident to a corporation.

After incorporation under this Act a labor union would be a corporation "**organized and** existing under **and** authorized by the laws of the United States."

The Act of Congress requires, however, that a Trades Union, in order to become incorporated, must first **exist, as an association,** with certain attributes, specifically defined by the National Trades Union Act. It must, in order to be incorporated, be an "association" of working people with two or more branches formed for certain specific purposes, which purposes properly describe the United Mine Workers of America.

An association of workmen which immediately after incorporation would be a corporation organized under the laws of the United States, is clearly defined, before incorporation, as an **"association existing under the laws of the United States."**

Labor Unions, both before and after incorporation under the National Trades Unionnion Act, are most aptly described by Section 8 of the Sherrherman Act:—

> "Corporations or associaticiations existing under or authorized by the laws of the the United States."

If the Union had incorporated,ted, it was a corporation "authorized by and existing under ider the laws of the United States"; if it had not yet been ben incorporated, but possessed the attributes defined in Sin Section 1 of the Trades Union Act as essential to incorporrporation, it was an "association existing under the laws aws of the United States" since it necessarily had to exist ust with distinct attributes defined by this federal law as a s a pre-requisite to incorporation.

It may be said that since the the Trades Union Act, by Section 2, made incorporated unl unions liable to suit in their corporate name, this implimplied an absence of such liability in a union which was not not incorporated.

As applied to an unincorporatorated union between 1886 and July 2, 1890, there might ght be something in this argument; indeed it would be unnunnecessary since we make no claim that at common law an an unincorporated association, whether it be the United Md Mine Workers, the Joint Traffic Association or the Adamdams Express Company, is liable to suit in its associate nameame.

The Sherman Act, however, mr, made an advance on the common law. Although it did did not purport to make labor unions, or any other uninnincorporated associations, subject to suit in all legal proceedceedings, it did render such associations liable, in their associsociate capacity, to suit for the commission of the particulacular offense forbidden by this Act,—a combination or cor conspiracy in restraint of interstate commerce.

By Sections **1, 2** and **3,** it it made it unlawful for labor unions to enter into sp such a combination or conspiracy.

By Sections 4 and 5 it gave the Federal Courts power to hale them into Court and to issue injunctions against them to prevent their violating the Act.

By Section 6 it made their associate property liable to forfeiture at the suit of the United States.

By Section 7 and 8 it made such associate property answerable to the suit of those whose business and property were injured by reason of the doing of the things forbidden by the Act.

Many other Statutes, both Federal and State, clearly recognize labor unions as existing thereunder, and give to them qualities and benefits not possessed by them at common law.

Thus the laws of 43 states, including Indiana, where the United Mine Workers has its principal office, and Arkansas, Oklahoma and Texas to which the jurisdiction of District 21 extends, as well as all of the other states in which the United Mine Workers maintains an active District organization, in 1914 had a statute known as the Trade Union Label Act, under which any trade union, whether incorporated or not, may register its Trade Union Label, the protection from misuse being provided for, either by fine or imprisonment, and in most cases (including Arkansas, see Act quoted, *infra*, p. 328 hereof) by a bill in equity **instituted by the Union itself** to enjoin the unauthorized use of the label.

The laws of 16 states, including 7 states where there are District Branches of the United Mine Workers, as well as Alaska, had, in 1914, statutes providing for a State Board of Conciliation which specifically required that one or more of the members of such Board should be appointed from "a labor organization" and a number of which provided that the submission to arbitration shall be signed on behalf of the employees by the "labor organization" to which they belong and which shall represent them in the proceedings, the Alaska Act subjecting the organization to damages if it ordered a strike while such an arbitration was pending.

In a number of these States the law requires the Commissioner to include in his annual or biennial report to the Legislature statistical details relative to "trades unions and other labor organizations and their effect on labor and capital."

The laws of many states make it a misdemeanor for anyone to wear or obtain aid by the unauthorized use of the button, badge or insignia of any "trade union".

Many States also have Statutes prohibiting employers from coercing their employees not to join or continue members of Labor unions. The possible unconstitutionality of such statutes would not appear to detract from their effect as a recognition by the State Legislatures of the present existence of the Labor Unions which they were designed to protect.

The laws of Canada, where as alleged in the answer (247,261) and as shown by the testimony (395) the United Mine Workers has one or more active District Branches, contains two statutes entitled "Trades Union Acts," which distinctly recognize Trades Unions as existing thereunder and which give to such organizations, even where not registered, rights and immunities not possessed at common law.

In order not to cumber the body of this brief, a tabulation of the most striking of such Statutes is given in an appendix (Appendix C, p. 327).

As a general rule, the individual members of an illegal combination of capitalists are financially responsible and available for suit, while the individual members of a labor union are not.

The question at issue in this case must not, however, for that reason be considered in its application merely to the particular form of unincorporated association known as a Labor Union.

Just as the Danbury Hatters presented the unusual case of the offending members of an unlawful combination of laborers financially responsible and in the jurisdiction, so the next case which arises under the

Act may be one of an unlawful combination and conspiracy of merchants, manufacturers or capitalists where the individual members are not available to suit and the only adequate remedy is against the collective property of the association.

Let us suppose that Canadian manufacturers to the number of a thousand or more, form an unincorporated Association—The United Manufacturers of Canada—to promote their mutual interests and welfare.

While not organized by virtue of any Canadian Statute, they, as they are authorized to do under the laws of Canada, adopt a constitution and elect a President, Vice-President, Secretary-Treasurer and an Executive Committee, authorized to employ subordinates and to spend the Association funds to promote the common interest of the members, such funds being obtained by dues and assessments.

Believing that the expanding business of a certain New York manufacturer is a menace to that of the Canadian merchants, the Association determines to crush him in order to prevent the further shipment of his goods to Canada and to various States in competition with those of the Canadian manufacturers.

Its officers accordingly open an office in New York and deposit $500,000 in a New York bank, half of which is used in various peaceful ways, such as underselling, bribery, etc., to injure his business, which methods being unsuccessful, the officers of the Association purchase rifles and dynamite, and hire and incite a mob, which destroys the New Yorker's plant and leaves him ruined.

None of the members of the Canadian Association have offices in the United States.

He accordingly sues the Association in the Federal Court, serving its delegated officers at its New York office and attaches the remaining $250,000.

Could it be for a moment doubted that the suit could be maintained and that the New York fund be made answerable for the damage done?

Plaintiffs-in-error ask, rhetorically on page 92 of their brief:—

> "Is it conceivable that in Montague & Co. *vs.* Lowry, 193 U. S. 38, an action could have been maintained against the Tile Mantle and Grate Association?"

An examination of the record in that case shows, however, that the action in that case was **in fact** maintained against that association and prosecuted to final judgment, **which was rendered against the association** and affirmed by this Court, the appeal bond to this Court having been executed by the association by its Secretary (See Transcript in the Supreme Court pages 88, 101 and 119).

Indeed the caption of that case in the District Court is Lowry *vs.* Tile Mantle & Grate Association of California, 98 Fed. 817; 106 Fed. 38.

Plaintiffs in error place great reliance on the decision of this Court in Elliot *vs.* Freeman 220 U. S. 178.

That case, however, is not only clearly distinguishable from the case at bar, but taken with the subsequent legislation of Congress under the Income Tax Amendment, presents a very strong authority for our position.

Elliot *vs.* Freeman involved the construction of the Corporation Tax of 1909, which levied a tax on

> "every corporation, joint stock company or association or insurance company now or hereafter **organized under** the laws of the United States or of any State or Territory or under the Acts of Congress applicable to Alaska or the District of Columbia."

This Court had held in Stone *vs.* Flint Tracy Co. 220 U. S. 107, 145 that this Act was not unconstitutional as levying a direct tax, since it was in reality an Excise Tax on the privilege of doing business in a corporate or quasi-corporate capacity, sustaining as reasonable

the classification of businesses conducted under an organization deriving powers from statutory authority.

In Elliot *vs.* Freeman the question was whether the Act applied to a Massachusetts Trust organized at common law, and which it did not appear had derived from a statutory source "any quality or benefit not existing at common law."

In view of the nature and purpose of the Act, and of the use of the words "organized under", this Court held that the Act was applicable only to such joint stock associations as were "organized under same statute or derive from that source some quality or benefit not existing at common law."

In the course of the opinion Mr. Justice Day said:

"It was the purpose of the Act to treat corporations and joint stock companies, similarly organized, in the same way, and **assess them upon the facility in doing business** which is substantially the same in both forms of organization."

The above construction gave effect to the plain language of the Act, preserved its quality as an excise Tax, and avoided the constitutional question which would have been involved had Congress, while not desiring to tax individuals or partnerships on the privilege of doing business, had attempted to impose such a tax on a form of organization not created or benefited by statute, but operating like individuals and partnerships, at common law.

This Court pointed out the "essential difference between a joint stock company as it EXISTS at common law, and a joint stock company having extensive statutory powers conferred upon it by the State within which it is organized."

In the case at bar the Act of Congress does not read, as did the Excise Tax Act of 1909, "corporations, joint stock companies or associations **organized under"** Federal and State laws, but "corporations and associations **existing under or authorized by"** such laws.

Furthermore, in the case at bar it appears that the organization and operation of the United Mine Workers is specifically **authorized by** the laws of a number of the States in which it maintains active District Branches, and that not only Acts of Congress but statutes of every State in which it carries on its activities, specifically recognize it as existing under such laws and give to it qualities, benefits and rights not existing at common law.

Elliot *vs.* Freeman was decided in 1911.

On October 3, 1913, Congress passed the first Income Tax Act (38 Stat. at L. 166).

The provision in this Act defining the corporations and associations subject thereto, is most significant.

Its language would indicate that in drawing it, the framers had the decision of Elliot *vs.* Freeman in mind and aimed to extend its provisions to all joint stock associations whether deriving their powers from statute or at common law.

The provision is as follows:

> "G. (a) That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year **to every corporation, joint stock company or association,** and every insurance company, **organized in the United States, no matter how created or organized, not including partnerships,**
>
> "but **if organized, authorized, or existing under the laws** of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year."

There follow provisos specifically exempting certain organizations, including labor unions.

The Act of September 8, 1916 (39 Stat. at L. 756), used similar language:

> "Sec. 10 (a) That there shall be levied, assessed, collected, and paid annually upon the total net

> income received in the preceding calendar year from all sources by **every corporation, joint stock company or association, or insurance company, organized in the United States, no matter how created or organized, but not including partnerships,** a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the United States by **every corporation, joint stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country,** including interest on bonds, etc."

The significance of these provisions lies in the use by Congress of the words—

> "organized, **authorized, or existing under the laws** of any foreign country"

in the second clause of the provision (which for convenience we have put in separate paragraphs.)

A critical examination of the first clause—

> "every corporation, joint stock company or association, and every insurance company, organized in thd United States, no matter how created or organized, not including partnerships"

makes it clear, in view of its having been drawn following the decision in Elliot *vs.* Freeman, that it was intended to include joint stock associations organized at common law as well as such associations organized under state statutes or deriving powers therefrom. This is particularly evident from the specific exception of partnerships.

It is further to be noted that the first clause covers only such corporations and associations as are "organized in the United States" and the first clause would not

therefore cover a corporation or association organized in a foreign country. such a corporation or association being subject to tax solely by virtue of the second clause.

A joint stock association organized at common law in Massachusetts would therefore be liable to the tax.

If a similar association were organized in England and came to Boston to do business, it is inconceivable that Congress would not mean it similarly to be taxed. It could not, however, be taxed except by reason of the second clause, imposing a like tax on such an association "organized, **authorized, or existing under the laws** of any foreign country."

Unless, therefore, we are to indulge in the impossible assumption that Congress intended to tax a domestic common law joint stock association and exempt a foreign common law joint stock association doing the same business in the same way in the same block, we must conclude that the words "organized, **authorized, or existing under the laws** of any foreign country" as used in the Acts of 1913 and 1916, included joint stock associations formed at common law as well as those formed by statutory authority. It would seem entirely clear from the context that the words "organized, authorized, or existing under the laws of any foreign country" were intended to have as broad a significance as the phrase "organized in the United States, no matter how created or organized," in the previous clause.

This conclusion is fortified by the language of Section 13 (b) providing,—

> "The return (corporations, etc.) shall be made to the Collector of the district in which is located the principal office of the corporation, company, or association, where are kept its books of account and other data from which the return is prepared, **or in case of a foreign corporation, company, or association,** to the Collector of the district in which is located its principal office or business in the United States" etc.

In the latter clause, Congress evidently refers to the same foreign corporations, etc., as are taxed under the taxing clause and uses the word "foreign" as synonymous with "organized, authorized, or existing under the laws of any foreign country."

It will also be noted, (in connection with the contention of the other side that no procedure is provided to enforce the Sherman Act against unincorporated associations) that although the Income Tax Act provides a penalty of $10,000 against any corporation or association violating its provisions, the Act provides no procedure to enforce it, nor any procedure for such an association to recover back a tax or penalty erroneously assessed or paid, although the Association is clearly given such right.

The foregoing considerations are not affected, it is submitted, by the decision in Croker *vs*, Malley, 249 U. S. 223, which does not hold that the Act of 1913 is inapplicable to joint stock associations not deriving their powers from statute, but merely that the organization in question was not a joint stock association but a real trust.

Irrespective of whether or not Massachusetts trusts have, since 1909, received recognition from federal and state law and acquired rights and benefits from such laws, we believe that this Court would be slow to hold that the associate property of such an association, devoted to the injury of other persons in restraint of interstate commerce, would not be amenable to execution by a suit against the association in its associate name.

Both the United Manufacturers of Canada and the Massachusetts Trust would be subject to suit, in their associate names, under the Sherman Act, just as is the United Mine Workers of America.

Where it appears that the Association in question is one **"authorized by"** the statute law of states in which it carries on its activities and recognized as **existing** and given special rights and privileges by the statutes of the United States and of every state and territory where it does business, this merely fortifies the conclusion.

While none of such Associations were subject to suit at

common law, Congress, by the Sherman Act, has extended the common law to make them liable to suit, creating both a liability and a procedure to enforce it in the Federal Courts, similar to that created as to partnership associations by the Interstate Commerce Act,—to "charge the partnership assets with a liability and to personify the company so far as to collect a fine by a proceeding against it by the company name."

U. S. *vs.* Adams Express Company, 229 U. S. 381, 390.

All that is necessary to hold an association liable for damages under the Sherman Anti-Trust Act is to show its existence in some form sufficiently tangible to enable the Court by its process to reach its funds or property.

The existence of Federal and State Statutes recognizing its existence and giving it special rights merely makes its liability clearer.

It cannot take advantage of its associate and combined existence to harm other people in the manner forbidden by the Sherman Act, and use its associate funds for that purpose, and not at the same time have those same associate funds subject to the provisions of that Statute.

If the Association exists to do the damage, its associate funds also exist to pay for it.

On pages 88–90 of their brief, plaintiffs-in-error state and discuss the three reasons why they contend that the definition of "person" in the Sherman Act cannot be construed to include an unincorporated association.

(1) They argue that the use of the plural "laws" must be taken to mean "statutes."

To this we answer, first, that this is not necessarily so. The word "laws" has no such invariable significance as that suggested and must be read in each case in the light of the context and of the purpose of the Act in which it is found.

While the expression "organized under the laws" normally means "formed by virtue of the statutes," it is not true that "existing under the laws" also means "formed by virtue of the statutes."

It is submitted that the word "laws" in the Income

Tax Acts, above quoted, is used in a sense broader than "statutes."

Used in a remedial statute, intended to be sweeping and all-embracing in its scope, Congress intended by the phrase "corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state or the laws of any foreign country" to include every kind of combination which could be organized or exist in a form effective to restrain interstate commerce, no matter how or where formed or existing.

Congress might, as it did in the first clause of the Income Tax Act, have used the words "corporations and associations organized in the United States (or elsewhere) no matter how created or organized," in which case plaintiffs-in-error would doubtless still have urged the applicability of the maxim *noscitur a sociis*.

Instead Congress used the expression "corporations and associations existing under or authorized by the laws," etc., being the practically identical phrase employed in the proviso of the Income Tax law, which, as we have pointed out, Congress must have been intended to have exactly the broad meaning for which we here contend.

In the second place even if the word "laws" should be held to mean "statutes," still this association is directly within the definition, since, as we have shown, the statutes of several of the states where the United Mine Workers have active branches specifically **authorize** the formation of labor unions, and the statutes of all such states as well as the Clayton Act and other Federal statutes specifically recognize labor unions as **existing** thereunder, and give them rights, benefits and qualities which they would not possess but for such statutes.

(2) It is next assumed that our construction of this provision makes the phrase under discussion synonymous with "lawful corporations or associations," which, it is said, would exclude the very unlawful combinations against which the Act was designed to give a remedy.

As a practical matter it is hardly conceivable that any association could be formed which would not have some lawful purpose to justify its organization and existence, provided the organizers did not divert its activities to the attainment of some other object or use unlawful methods. The suggestion of the other side is really academic.

The phrase associations authorized "existing under or authorized by the laws, etc." is not, however, synonymous with "every lawful association" any more than "corporations organized under the laws" means "every lawful corporation."

We do not regard the definition in Section 8 as referring in any way to the **manner** in which the corporation or association is acting—whether lawfully or unlawfully. It does not mean "corporations and associations lawfully organized or lawfully existing" but corporations or associations no matter **what be the legal procedure employed in their formation.**

If a Mexican corporation organized by Villa in Juarez in defiance of the law and for an illegal purpose, came over to El Paso and burnt up cars in transit to other States, could its funds in an El Paso bank escape liability on the ground that it had not been lawfully organized?

Just as no legal subterfuge can be devised to evade the prohibitions of Sections 1, 2 and 3, so also if the association actually exists as an effective unit it is liable no matter what legal process was used in its organization.

Certainly the Circuit Court of Appeals did not mean, by referring to the fact that Labor Unions were not outlaws, to imply that the United Mine Workers had been acting lawfully at Prairie Creek, but merely that it was within a class of associations—labor unions—which had been recognized by the Clayton Act as lawfully existing, having a right to exist under the law.

The test of liability is not the correctness of the particular legal procedure by which the corporation or association attained the organization enabling it to restrain interstate, but merely whether it has in fact been organized, no matter where or by what legal pro-

cess, and **actually exists** in a form sufficiently powerful to do the forbidden thing, and sufficiently tangible to be subject to the remedy against its associate resources.

In the case at bar, also, no matter what test be applied, the defendants are well within it.

(3) It is suggested that our construction of the phrase makes the words "existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country," *surplusage.*

If, however, these words had been omitted, if the phrase had been simply "corporations and associations" without the qualifying phrase showing that unincorporated associations were intended as well as those having the attributes of corporations, there would have been considerable force in the argument *noscitur a sociis.* It is these very words which are the conclusive answer to the application of that maxim in this case.

The construction suggested by the other side would make the important words "or existing under" surplusage.

The decisions cited on pages 109–110 of the brief of plaintiffs-in-error were cases where personal judgments were sought against individuals who had not directly participated in the conspiracy. In the case at bar we are merely seeking to hold the fund delegated to the associate officers to carry out the objects of the Association.

Finally, plaintiffs-in-error rely on the provision in Section 7 that the action shall be brought "in the district in which the defendant resides or is found."

Certainly any one who was at Prairie Creek during the spring, summer and fall of 1914 would have had no difficulty in realizing that the United Mine Workers of America was found there in full force.

At the time defendants destroyed plaintiffs' business and property in 1914 and at the time this suit was brought, the United Mine Workers had an active District Branch in Arkansas, with an International Board Member for District 21, James Mullen, living at Midland, Arkansas, three miles from Prairie Creek, whose duty it was to attend to the business of the Union in that District.

The writ in this suit was served on the National Officers when they were in the Western District of Arkansas attending to its business and supervising its associate activities which were being carried on in that District.

How the United Mine Workers could have been any more tangibly "found" in Arkansas if it had been a corporation we cannot imagine.

It has been shown in the case at bar, both from the United Mine Workers Constitution and Convention Proceedings, and from the practical workings of its organization, that this organization is so constructed as to present an extraordinary example of efficient and centralized power.

It claims that it is free to use all its vast resources and employ all its tremendous power, without responsibility.

There is no man or body of men whose intelligence or whose character will stand absolute power,—power without responsibility.

If the wisest men of history have been unable to withstand the temptation to abuse such power, is it to be expected that it can safely be entrusted to the Labor Unions, composed so largely of ignorant men, easily swayed by demagogic influences?

> **"If a State, with its recognized powers of government, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess?"** *In re* Debs 158 U. S. 564,600.

While labor leaders, in order to secure support for reelection by the radical element in their ranks, must needs claim and fight for freedom from responsibility for their organizations, such of them as really have at heart the ultimate welfare of their class would doubtless be glad to have this unscrupulous element realize that their development must be effected in subordination to the rights of the community.

Far seeing men must understand that the capacity of the Labor Unions for usefulness to their members and to the country, far from being hampered, will be greatly

enhanced and prolonged if, with their enormously waxing membership, wealth and power, they are compelled to accept a degree of responsibility for wrongdoing.

The laboring class can never really prosper without the confidence of the rest of the people.

Now that it has come to act as a group it can never secure that confidence until it assumes group responsibility.

It is believed that when it comes time to write the history of the Labor Movement from 1920 to 1930, no legislation by Congress will stand out as wiser than the inclusion in the Sherman Act of **every** combination, whether of laborers or of others, and the creation of a procedure to make the associate property such a combination liable for the unlawful injuries it inflicts.

Such is the first step toward the realization by the Labor Unions of full social responsibility, which can never be attained while they and their resources are exempt from the legal liability for injuries unlawfully inflicted by them.

The purpose of the Sherman Act was to put a stop to and to give an effective remedy for the obstruction of interstate commerce by combinations, whether of individuals, of corporations or of associations.

Neither the prohibitive nor the remedial provisions make any exception, either as to the classes covered, the kind of combination forbidden, or the type of organization responsible.

No arrangement can be contrived which is effective to attain the forbidden result and which is beyond the reach of the law to restrain and disintegrate; nor can any association, however organized, in fact exist in a form able to employ its associate funds, its organization, its trained officials and its combined existence and collective power effectively to inflict injury and destruction to the business and property of those engaged in such commerce, without these same funds becoming available, under the remedial provisions of the law, to satisfy such injury.

If the Association exists to cause the injury provided for by the Statute, its Associate Funds also exist to pay for it.

THIRD.—**The Procedure Employed in Bringing Defendants into Court was both Derived by Clear and Necessary Implication from the Sherman and Clayton Acts, and is that Prescribed by the Arkansas Code.**

On pages 79–83 of the Brief of Plaintiffs in Error it is argued that Congress, by the Sherman Act provided no procedure for bringing an unincorporated labor union into Court or for subjecting its associate funds to liability.

Our answer to this position is two-fold:—

In the first place, as held by the Circuit Court of Appeals, such a procedure is necessarily implied from the Sherman Act itself.

As said by Judge Adams (235 Fed. 1, 6):—

> "If we are correct in our view that voluntary unincorporated associations are included in the word 'associations' as used in Section 8, above quoted, then we are of the opinion that there is a clear and necessary implication that the association may be sued in its own name; otherwise the provision in the law that the association should be liable could not be enforced. and the law would fail as against all such associations, the remedy of the injured party being confined to an action against the mere agents and employes of the association, in most cases unable to respond in damages."

But even if there were no such necessary implication from the Sherman Act, the procedure employed is that prescribed by the Arkansas Code, which under the Conformity Act, properly regulates the form in which actions in the Federal Court, sitting in Arkansas, shall be prosecuted.

Section 7446 of Kirby & Castle's Digest of the Statutes of Arkansas, page 1739, is as follows:—

> "Where the question is one of a common or general interest of many persons, or where the parties

> are numerous and it is impracticable to bring them all before the Court within a reasonable time, one or more may sue or defend for the benefit of all."

The above provision evidently prescribes the procedure to be employed in a suit by an unincorporated trades union to enjoin the improper use of its union label, (see Appendix C. p. 328 hereof) no specific procedure being provided by the Arkansas Trades Union Label Act.

From the Third Amended Complaint on which this suit was tried (Record 179 to 201), it is entirely apparent that the question involved was one of a common or general interest of many persons as regards the liability of the defendant association, and in paragraph six of the Complaint (page 183), it is specifically alleged that the membership of the Union exceeds 400,000 miners.

The defendants named in the writ include, in addition to the individual defendants, the United Mine Workers of America, John P. White, as President of the United Mine Workers of America, Frank L. Hayes, as Vice-President of the United Mine Workers of America, William Green, as Secretary-Treasurer of the United Mine Workers of America, James Mullen, as National Executive Board Member of the United Mine Workers of America, Tom King, as Board Member of the United Mine Workers of America, District No. 21 United Mine Workers of America, P. R. Stewart as President of District No. 21 United Mine Workers of America, William McLaughlin as member of the Executive Board District No. 21 United Mine Workers of America, and Edward Cunningham as President District 21 United Mine Workers of America, as well as the different local unions specified.

Paragraph 10 of the Complaint, found on page 184 of the Record is as follows:—

> "That John P. White is president of said United Mine Workers of America and that because of the

numerous members of said United Mine Workers of America it is impossible to make each one a party defendant to this cause, but that said United Mine Workers of America is represented in its District 21 by P. R. Stewart formerly president and William McLaughlin, a member of the executive board of District 21 or president thereof, Edward Cunningham as vice-president or president thereof, Tom King, a member of said executive board, James Mullen, a member of the executive board of the United Mine Workers of America, and Frank L. Hayes, vice-president of said United Mine Workers of America, William Green, Secretary and Treasurer thereof; that James Mullen is the agent of said United Mine Workers of America for the transaction of all business by said organization in the State of Arkansas and resides in the town of Midland; and the plaintiffs allege that said defendants sufficiently represent the United Mine Workers of America for the purpose of this action, and that the service of process upon them and the trial of the suit in which they are parties will constitute proper representation of the United Mine Workers of America."

It is therefore apparent that the suit, which was one where the question was of a common or general interest to many persons and in which the members of the Union were not only numerous but innumerable, was brought against the Union in its Union name and against all the principal officers in their capacity of officers as representing the Union.

In paragraph 30 of the complaint (Record 200) it is alleged that the United Mine Workers and its representatives had no property known to the plaintiffs except certain funds described in said paragraph, upon which allegation writs of attachment and garnishment were issued against the United Mine Workers of America and its representatives and the funds garnished and the

various garnishees answered, in which manner funds of almost $50,000 were attached. The service of the writs of attachment and the answers of the garnishees appear on page 16 *et seq.* of the record.

After Judge Youmans had sustained the demurrer to the original complaint on the ground that it did not present a case involving a restraint of commerce, the United Mine Workers of America appeared and had the writs of attachment and garnishment dissolved and the garnishees discharged, to which the plaintiffs saved due exception and took an appeal, which the Circuit Court of Appeals reversed and remanded the case for further proceedings.

After the trial and judgment for the plaintiffs, a supersedeas bond was entered by the United Mine Workers of America, making it unnecessary to pursue the garnishment proceedings further.

In the Circuit Court of Appeals, in the hearing on demurrer, both the National Organization and District No. 21 made motions to dismiss on the ground that the writ of error should have been to this Court, and, after the case was remanded to the District Court, they all answered, which in effect amounted to a general appearance and a waiver of any defect of process.

Ferguson *vs.* Carr, 85 Ark. 246, 252, and cases cited.

Dunbar *vs.* Bell, 90 Ark. 316.

Lowry *vs.* Tile Mantel and Grate Assn., 98 Fed. 817.

While the defendant has made frequent objections on the ground that it was not an entity or suable under the Sherman Act, the record does not disclose that it has ever objected to the service of process on it in the name of its representatives as prescribed by the Arkansas Code.

Branson *vs.* Industrial Workers of the World, 30 Nev. 270, 95 Pac. 354) was a suit against the I. W. W. for damages by a conspiracy to boycott plaintiff's business, the service having been made on the I. W. W. under

the Nevada statute similar to Section 7446 of Kirby's Digest above quoted. The lower court dismissed the case, holding that the suit could not be maintained against the Association, but the Supreme Court of Nevada in a well-reasoned opinion reversed the lower court and sustained the suit, saying in reference to this provision:—

> "Under our code provision, there is but one form of civil action, and legal and equitable distinctions, so far as practice is concerned, are largely, if not entirely done away with. To hold that the defendant organization (labor unions) cannot be sued without including all members, which are so numerous, scattered and difficult to ascertain, might cause such hardship and delay as would amount to a denial of justice. It is hard to conceive of any case to which the statute would be more applicable in its provisions that where the parties are numerous one or more may sue or defend for all."

The above passage is quoted with approval in Martin on the Modern Law of Labor Unions, Section 218.

This decision was followed in St. Germain *vs.* Bakery and Confectionery Workers Union No. 9 of Seattle, 97 Wash. 282, which was a common law action for damages against a labor union. The Court held that the service and the suit against the defendant in its associate name was sustained under a code provision similar to that in Arkansas, saying (page 294):—

> "In the decree, the costs were awarded against certain of the respondents, but not against the unions, which were really the instigators, and controlled the picketing, and caused the damage in the case. It is argued by the respondents that costs cannot be awarded against the unions, because the unions are not incorporated bodies, but are mere voluntary associations. It is alleged in the complaint that these unions are voluntary organizations, that the membership thereof is in the neigh-

borhood of 500, and is so large that it is impracticable to bring all the members thereof before the court, and the officers, therefore, only, are made parties, without bringing all of the members of the unions before the court. In the case of Branson *vs.* Industrial Workers of the World, 30 Nev. 270, 95 Pac. 354, a Nevada case, it was held that, in an action in equity against a voluntary unincorporated organization, where the members comprising the same were numerous, such organizations might be made parties to an action, where a few of the members thereof were made defendants for the purpose of representing the organization, and, in that case, it was held proper to enter judgment against the organization, as well as against the individual parties who were named as defendants in the case. That case is a learned discussion of the question, and, we think, is conclusive. It became the duty of the court, therefore, to enter a judgment for damages and costs against all of the respondents."

"The judgment appealed from is reversed, and the cause remanded, with instructions to the lower court to grant an injunction, as prayed for, against all of the respondents, and against all other persons acting by, through, or under them, and for nominal damages, and for the costs in this court, as well as in the court below."

Penny *vs.* Central Coal & Coke Co., 138 Fed. 769, is a well considered case where the Circuit Court of Appeals for the Eighth Circuit sustained a suit by representatives of a church association on behalf of the church, under the Arkansas Code.

In that case the Coal Company had undertaken to mine a valuable seam of coal under lands owned by the church, an unincorporated association, and the suit was brought for the value of the coal. The defendant raised the question that the suit could not be maintained without making all the members of the church parties but the court overruled this contention, saying:—

"Surely, it must be conceded that it is a question of common or general interest of many persons composing the congregation of a religious society that a coal mining corporation should, unbidden, come and burrow beneath their house of worship and the graves of their dead, for coal, and cart it away. As the worshippers of such a society are generally numerous and changing, constantly coming and going, rendering it difficult, if not impracticable, to obtain the names and the consent of such a conglomerate mass, composed of men, women, adults and minors, to join in such an action as this, the situation certainly brings the case within the scope of the statute, enabling the acting trustees of the society to its use, to maintain the action of trespass for such a wrongful entry upon and spoliation of its property. This statute, in its pertinency to the instance of a church congregation, does not give legal recognition to the generally known fact that the temporalities of a religious organization are customarily committed to the care and direction of one or more trustees."

In Tinkler *vs.* Powell, 23 Wyo. 352, the Supreme Court of Wyoming sustained a suit brought by Tinkler as President of Local Union 2616 of the United Mine Workers of America, to recover from the treasurer funds belonging to the Union.

As we have heretofore stated, we do not contend that the judgment rendered below is a personal judgment against the individual members of the United Mine Workers of America or binds the real estate of a miner in California or Pennsylvania who had no actual part in the Paririe Creek strike and who is not specifically named as a defendant in this suit.

The provision in the Code or Arkansas merely removes the difficulty of getting the Union into court in its associate capacity. Whether, as we believe, it is suable in its associate name, or whether it should be sued in the

names of its officers as its representatives, is immaterial, since both are named in the writ and caption in the present case.

The code procedure of Arkansas is not new to the law. For many years it has been the practice in equity to bring in numerous defendants having a common interest by suit against some as representatives of all.

See Evanson *vs.* Spaulding, 149 Fed. 913, 150 Fed. 517.

Smith *vs.* Swormstedt, 57 U. S. 288, 302.

Jensen *vs.* Cooks' & Waiters' Union of Seattle, 81 Pac. 1069, 39 Wash. 531.

Willcut & Sons Co. *vs.* Bricklayers B. & P. U. No. 3, 85 N. E. 897, 200 Mass. 110.

Reynolds *vs.* Davis, 189 Mass. 294.

Russell & Sons *vs.* Stampers & Gold Leaf Local Union No. 22, 107 N. Y. Supp. 303.

Auburn Draying Co. *vs.* Wardell, 227 N. Y. 1.

U. S. *vs.* Coal Dealers' Assn. 85 Fed. 252.

Pearson *vs.* Anderburg, 28 Utah, 495.

Fitzpatrick *vs.* Rutter, 160 Ill. 282.

The Code provision merely applies the long standing rule in equity cases to cases arising at common law.

The cases cited by the other side are all suits at common law in jurisdictions where the procedure had not been modified by statute so as to permit a suit against a large association in the name of certain representatives.

FOURTH.—**The United Mine Workers of America, Acting through its National Officers and its Official Journal, as well as by its Duly Constituted District and Local Branch Agencies and Officers, Authorized, Caused, Participated in, Encouraged, Ratified and Approved the Destruction of the Business and Property of Defendants-in-Error.**

The whole case of plaintiffs-in-error for the exemption of the National Union for acts of its members is built up around a misconstruction of Section 2 of Article XVI of the National Constitution.

By this provision, which we have heretofore analyzed (*supra* pp. 26–31) the District Branches are given authority to **"order"** local strikes on their own responsibility and are required to get the sanction of the National Executive Committee to such strike only in case they seek aid from the National Treasury.

In discussing this provision, plaintiffs-in-error first substitute "conduct" for "order" and then contend that it relieves the National Association from liability for local strikes.

The word "responsibility" is used, however, as the context clearly shows in the sense of "liability," and not of "initiative."

In this clause there is obviously no attempt to limit the liability of the National Association **to third parties,** but merely to provide that **as between the principal and the agent** the latter could expect no funds other than those collected from District 21 unless the National Executive Board sanctioned the strike.

In the case at bar there is ample evidence that this strike was sanctioned by the Executive Board.

On May 4th, the first meeting after the strike was called, White reported to the Board, with approval, the flagrantly unlawful means that had been taken by the Local Officers on April 6th to prevent the operation of the mines, at which meeting Mullen, the District 21 representative, was present. The Board accepted the report and took no action of disapproval. Instead, White

went to the District 21 convention at Fort Smith on May 18th and made a fiery speech encouraging the local membership to continue their efforts to prevent the extension of the open shop.

> **"We have watched your struggles** with a good deal of **pride and satisfaction** and have admired you for the **splendid fighting qualities** that you possessed." * * *
>
> **"You cannot keep this movement half slave, half free.** The fight belongs to the organized miners to make. You who have tasted of the fruits of this movement and found out its benefits as compared with the conditions of the past, know that the great brunt of this battle must of necessity fall upon your shoulders, to free these fellow-workers in the non-union fields of this country."

Even therefore if the Constitution had required the sanction of the Executive Board to the institution of a Local Strike, such sanction was amply evident.

The Constitution, however, gave specific authority to District 21 to order such a strike on its own initiative.

Instead of limiting the authority and discretion of the Districts as plaintiffs-in-error contend, this provision clearly enlarges it.

The decision of the House of Lords in Denaby & Cadeby Main Collieries, Ltd., *vs.* Yorkshire Miners Association (1906) Appeals Cases 384, relied on by plaintiffs in error, is clearly distinguishable.

This was a suit for damages for inducing plaintiff's employees to strike without notice in violation of their agreements which required them to give two weeks' notice before stopping work. The Lord Chancellor specifically states at page 393:—

> "No unlawful methods were used by the defendant association or sanctioned by it."

The constitution and rules of the Union provided that no strike should be called except with the vote of a given

majority of the members and after taking certain prescribed steps to avoid it.

The strike in question was called by two district officers without the required vote or conciliatory measures being taken. As found by Lord Davey, these "local leaders acted on their own impulse and did not purport to act on behalf of the association or for the benefit of the association. * * * Both the officials and the general council of the association repudiated the action of the local branches as soon as they heard of it" (page 397).

In the case at bar, District 21 had specific authority in the national constitution to order the strike without any vote or without the sanction of the National Executive Board.

While it did not affirmatively appear that the District President and Secretary forwarded a written statement to the International President and got his decision before taking "final action" in this strike as provided by the District Constitution, it does appear that Stewart, the District President, and Mullen, the District International Board member, were in Kansas City with John P. White, the International President, from April 4th, when the Prairie Creek mine started open shop, until April 8th, two days after the riot of April 6th; that on April 8th Stewart and Mullen came to Fort Smith on Union business, stayed two days and then went back to Kansas City, where White still was; that an approving account of the riot was published in the official journal, which the constitution required to be read by every local secretary throughout the country; that at the next Executive Board Meeting on May 4th, at which Mullen attended, White graphically reported to the Board the assault which the Union men had made on the Company employees, resulting in the triumph of the Union cause, in whose name the acts had been done, the hoisting of the Union flag on the tipple, the exodus of all the employees, the flooding of the mines and their subsequent idleness and the cessation of the shipment of coal; that

on May 18th White came to a convention of District 21 at Fort Smith and made a speech encouraging the men to continue their fight against the open shop; that subsequently the Union through its District Branch bought high powered rifles and engineered the attack on the property resulting in its destruction, all of which was approved and applauded by the Official Journal of the National Association, **not only after its occurrence, but while it was still going on.**

In the Denaby case it appeared that after the men went out they were ordered back by the Executive Council, but when they applied for work they were required to sign new contracts having in them clauses to which they objected, and that for the latter reason, solely, they refused to go to work.

It was held that the fact that they were given strike pay during the subsequent period did not amount to a ratification of the original strike, since the cause of their being out when receiving such strike pay had no relation to their original cessation of work in breach of their contracts.

This essential circumstance and reason for the continuance of the strike is not mentioned in the analysis of the case by plaintiffs-in-error.

On page 103 of their Brief they state that it does not affirmatively appear in the case at bar that the association granted benefits to the strikers.

This does appear on pages 2470–2471 where the treasurer's report shows payments to the Local Unions participating in this strike, of more than $20,000, paid from, the Defense Fund, which under the Constitution (Record page 2842, Article X, Section 1) can be used only fo this purpose.

Without going over again all the testimony summarized on pages 125–161 hereof, it clearly appears that the Union, through its Officers, its Executive Board, its Official Journal and by vote of all the delegates at its National Convention, officially recognized that the destruction of plaintiffs' property and business had been brought about

by the Union, through its officers, members and representatives, in order to carry out its aims, objects, and purposes, and that it accepted the benefit to the Union from the suppression of the open shop mine and ratified the whole proceedings in as unmistakable a manner as it would be possible to imagine.

It is probable that there will never again be an important suit against a labor union in which as conclusive evidence can be produced as is contained in this record.

The Union officials were so sure that, no matter how flagrantly they violated the law, neither the Union nor its associate funds could be held liable, that they boasted with brazen candor, of their success in crushing an operator who dared oppose them.

A number of English cases, decided between the decision in the Taff Vale case (1901 A. C. 426) and the passage of the Act of Parliament which annulled it, are instructive on the question of the liability of the National Union for the acts of its District and Local Branches.

In the Taff Vale case itself it appears that in the lower Court it was contended by the Union that the local organizing secretaries who had charge of the strike, had acted outside of their authority.

Lord Justice Farwell held that although the National Union, the principal, had not authorized the particular acts, it had put its agents in a position to do them and was liable for what they did in the course of their duties (see 1901 A. C., p. 433).

This question was not discussed in the House of Lords, although the liability of the Union was sustained.

In Giblan *vs.* National Amalgamated Laborers' Union (1903) 2 K. B. 600, the plaintiff was a former member of the Union who owed it £20, which the Executive Committee directed the Secretary to take steps to collect.

The Constitution of the Union providing for strikes, but did not authorize a strike to collect a debt.

Giblan was expelled by the Union and later the General and Local Secretaries threatened Giblan's employer to

strike the men he was working with unless he was discharged.

On his discharge for this reason, he sued the Union, which contended that the acts of the two secretaries were beyond their power and *ultra vires*.

The Court held that the Union was liable.

Lord Justice Vaughan said that the acts of the two secretaries were **"not** *ultra vires* **the Union but only of its officers,"** and since the Union in general meeting had adopted such acts and **taken the benefit of them,** it was liable.

Justice Stirling referred to the well known principle of law that the master is liable if the act is done in the course of his duty and for his benefit although there be no express command or prior authority. He held that under the Union Rules it was the duty of the Executive Committee to protect its funds, that the Secretaries were endeavoring to attain an end which they had been directed to attain, and the fact that they did it in an improper way did not relieve the Union from liability. He suggested that perhaps a member could have enjoined them from declaring a strike to collect the debt, but held that this consideration did not control the question then before them, which involved third parties.

The application of this decision to the case at bar is too obvious to require comment.

In Mackendrick *vs.* National Union of Dock Laborers in Great Britain and Ireland, 48 Scot. L. Rep. 17 (1910) (Court of Session), the facts were as follows:—

Defendant was a Trade Union, registered in England and a copy of its rules recorded in Scotland under the Trade Union Act of 1876, Sec. 6. It had a Branch at Glasgow, Branch No. 12. The President and Secretary of this branch by letter appointed plaintiff as its law agent, with a free hand to deal with all cases. It stipulated that while the direct relation of agent and client should subsist between plaintiff and each injured party, "we

guaranty the costs incurred by you in the event of your fighting a case unsuccessfully."

In an unsuccessful case the cost were £425 and the injured man was unable to pay. Plaintiff sued the Main Union.

The organization of this Union was remarkably similar to that of the United Mine Workers.

The Union Rules or Constitution provided for its government by an "Executive" elected by a congress of Branch representatives.

Rule XII (10) of the Union provided that "Branches may advance money to assist any member to enforce his legal claims" for occupational accidents, etc., but "no money shall be advanced under this rule until all the available evidence bearing on the case has been laid before the Branch Committee and a copy supplied to the Executive," which might veto branch decisions to spend money on such cases.

Rule XIV (3) provided:—

> "No person shall have power to incur any financial responsibility, or transact any business in the name of the branch of the Union, unless with the special authority of the Branch or of the Branch Committee."

Rule XVI (1) provided that the Branch funds, should be the common property of the Union; "Branches seceding from the Union or being dissolved shall forfeit all claims to the funds of the Union."

The answer admitted that branches were empowered to employ law agents but denied that the Branch was an agency of the Main Union, **defendants alleging that the Branch had its own organization and made its own disbursements.**

It appeared that after the employment of plaintiff, the General Secretary of the Union knew and approved of it and of its terms (pages 25 and 27).

The funds of the Union were derived from an assessment of 3 pence per week from each member, one-half penny of which was remitted to the Main Union and

"the remainder, in addition to interest on accumulated capital to be retained by Branches for general fund and burial benefits subject to legal demands of the Executive."

The lower Court, in discussing the Union Rules said:—

> "The unit of membership of the union is the individual and not the Branch, though it is, *ipso facto*, as member of the Branch that the individual becomes a member of the Union. The individual dock laborer is a member of the Branch, and as a member of the Branch a member of the Union.
>
> "But there is, notwithstanding, another result of the rules or incident to the Constitution, viz., that the local combination or Branch, though under control of the Union, has a large administrative independence. The situation created is somewhat of an *imperium in imperio*" (p. 18).

Lord Cullen said (p. 22):—

> "The active life of the Union is in the Branches, each of which, in its particular area, carries on the business of the Union, subject to such central control by the Executive as the Rules prescribe."

The lower Court dismissed the action on the ground that although the obligations of the Branch competently undertaken were the obligations of the Union, and though the Branch had power to advance members money to defend their claims, it had no power to bind the Union to the indefinite liability here involved, which was *ultra vires* the Branch.

This decision was reversed by the Appellate Court, which held the Union liable.

The Court held that the power given the Branch to employ a law agent included the responsibility to pay him for the work which he did.

The Lord Justice Clerk said (p. 24):—

> "I can see no ground for holding that where a Branch acts in accordance with powers conferred, by

appointing an agent for litigious work, the person so employed has not a basis for claim against the Union for his remuneration. **Any business that a Branch carries on is business of Union, subject to the control and direction of the Executive of the Union.**

* * * * * * * *

"It is further not to be left out of view that in this particular case the evidence discloses that the Executives, if they thought they had the power to stop or intervene in Bowden's case, could have intervened. For it is, as I think, established that their general secretary was perfectly well aware of the pursuers' appointment to be Branch law agent, and also of the proceedings which were being taken in Bowden's case and that **no exception was taken either on grounds connected with the rules or on any other ground to what was being done."**

A decision by the Circuit Court of Appeals for the Ninth Circuit clearly illustrates the liability of such an Association for the acts of the District or Local Branches created by it as instrumentalities to carry out its purposes.

Spaulding *vs.* Evenson *et al.*, 149 Fed. 913, 150 Fed. 517, was a bill for an injunction brought by an Iowa wagon dealer to restrain defendant, the Inland Empire Implement and Hardware Dealers Association, and its officers, from interfering with plaintiff's business of selling buggies and wagons in Eastern Washington.

It appeared that the Hardware Dealers' Association was composed of some 166 local hardware dealers, some of whom sold buggies and wagons and some of whom did not. At a meeting of the Association there was formed a subsidiary association known as the Peddlers' Association, to which members of the Hardware Association subscribed in varying amounts, and the funds of which were to be used by a committee of three to prevent sales of ranges or vehicles by non-resident dealers.

This committee or its agents had interfered by various means with plaintiff's salesmen whenever they attempted to solicit business in Eastern Washington.

In the lower Court Judge Whitson granted the injunction against the Hardware Association, despite its contention that the illegal activities complained of were committed not by it but by the Peddlers' Association, the Court holding that the latter was but the creation and instrumentality of the Hardware Association.

The decree was affirmed by the Circuit Court of Appeals. Paragraph 4 of the syllabus is as follows:

> **"Where a voluntary association creates a subsidiary or branch association as an instrumentality through which to accomplish certain purposes, it is liable for the acts of such subsidiary association to the same extent as though such acts had been done by the entire membership."** (150 Fed. 517.)

See also U. S. *vs.* American Co., 263 Fed. 147, 152.
Nederlandsch S. M. *vs.* Stevedore's L. B. Society, 265 Fed. 397.

In a number of cases decided by this Court holding corporations liable for criminal torts the defense has been raised that the acts were *ultra vires*.

In these cases the Court recognized the development of the law which has taken place in the extension of corporate liability for acts, which, while not strictly within the corporate power, or within the express authority of the agent who committed the unlawful acts, were within the scope of the agent's employment, and were done on behalf of and for the benefit of the principal, even though against his express orders.

In these cases all the present contentions of plaintiffs in error as to *ultra vires* and to the alleged limitations in the Union Constitution of the authority of the Branches, were fully considered and finally disposed of.

Salt Lake City *vs.* Hollister, 118 U. S. 256, 260.
Denver & R. G. R. Co. *vs.* Harris, 122 U. S. 597.
Washington Co. *vs.* Lansden, 172 U. S. 534, 544.
New York Cent. R. Co. *vs.* U. S. 212 U. S. 481, 492.
Joplin Mercantile Co. *vs.* U. S., 213 Fed. 926.
In re Grand Union Co., 219 Fed. 353, 363.
U. S. *vs.* Nearing, 252 Fed. 223.

Effect of the Failure by the National Officers to Take Action.

If it were necessary to this case we believe that this Court would sustain the liability of the National Association without regard to the conclusive evidence of prior authorization, encouragement, participation and express ratification.

We are confident that this Court will adopt the rule which has been laid down by the Federal Courts in practically every Circuit, that where Union officers and members, over whom the Union has disciplinary control, in the course of a strike, do illegal acts in furtherance of the Union cause, the fact that the Union takes no affirmative and public action disapproving what they have done and suspending or expelling them from membership, is of itself the strongest kind of evidence that the acts were really authorized or connived at by the Union and that they were done in its behalf and for its benefit.

Before discussing these decisions, however, we desire to point out again that the evidence in this case conclusively sustains the liability of the Union on four distinct grounds. This statement is no afterthought. The case was tried and the evidence presented on this theory (see Record p. 621).

(1) The Constitution authorized the District to call this strike.

Plaintiffs further offered to prove that the National Organization, both through its Convention proceedings, and through editorials and articles in its Official Journal, had for years before 1914 had not only encouraged its membership to suppress open shop operations but by recounting, often with express approval, usually without disapproval, and always without disciplinary action, illegal methods used in other Districts to accomplish this result, had sanctioned the use of such methods in carrying on its strikes.

These offers included among others an article by the President of the Union recognizing that violence always

attends strikes of any magnitude (626), accounts of intimidations of proposed open shop operations (630), an acknowledged policy of the Union to disobey injunctions in labor disputes (632), advocacy of bullets rather than prayers (632) and of the policy of taking the enforcement of the law into their own hands (633), accounts of combats between the strikers and the militia with advocacy of violent methods, absolutely incompatible with any idea of self-defense (633–34–35); open advocacy of violence in connection with the West Virginia strike (636–37–42).

Certain of the articles offered from the Journal of April and May, 1914, relative to the Colorado strike, gave an enthusiastic account of hundreds and even thousands of miners marching in battle array against the Colorado Militia and the conquest of these mines with considerable loss of life and enormous destruction of property.

All this evidence was objected to by the defendants and was ruled out by the trial Judge on the ground that in spite of the broad allegations of conspiracy in the complaint (paragraph 22 Record pp. 191 to 192) the plaintiffs were not entitled to show, by extracts from the Official Journal relating to other strikes during the period immediately preceding that of the Prairie Creek strike, that the National Union had openly advocated the use of illegal and violent methods to its members and had thereby completely authorized and encouraged them to use the same methods in their local strikes conducted by its various District Branches.

With all respect to the learned trial Judge, this ruling was clearly erroneous, and as it was made in the instance of defendants, they clearly cannot now base any contention on the absence of such evidence in the Record.

In Missouri, K. & T. Ry. Co. *vs.* Elliott, 102 Fed. 96, 103 Judge Caldwell said:

> "The rule is well settled that when the plaintiff offers and is ready to produce competent evidence to prove a material fact in issue, and the Court

> erroneously rejects it on the objection of the defendant the defendant will not afterwards be heard to say that the plaintiff failed to prove the fact which the rejected evidence would have established. The defendant will not be allowed to take advantage of his own wrong, or the errors of the Court induced on his own motion, and compel the plaintiff to suffer the consequences."

Aside from the rejected items, however, the Record contained ample evidence to the same effect (see as to Irwin 1060, 1061; as to West Virginia 589, 1118, 1131, 1135–1140, 1145, 1146; as to Colorado 568, 1047, 1136–1140.)

What kind of purely legal activities was McDonald, a Union delegate, talking about when he said, in the Joint Convention of 1912 (Rec. 1118)?:

> **"We have had men to go to jail. We expect that more of us will go to jail. The penitentiary doors have no terrors for us, as far as that is concerned. And if putting two or three hundred of our men in jail will organize West Virginia we will send two or three hundred down. The chances are we will have to get busy with that situation shortly."**

Furthermore, the proceedings in the Executive Board on May 4th, followed by White's speech on May 18th and the published account in the Journal of the Riot of April 6th, in themselves were proper evidence of authorization by the National Association to pursue the same unlawful methods thereafter.

The specific business of James Mullen, International Board Member for District 21, was to go back to his District from the meeting of May 4th and report the attitude of the Board on what had been reported to it by White relative to the Prairie Creek Strike.

The evidence brought the case squarely within the rule laid down by Judge Lacombe in the Hatters Case

and quoted by plaintiffs-in-error on page 111 of their brief:—

> **"Something more must be shown (than the mere payment of dues), as, for instance, that with the knowledge of the members unlawful means had been so frequently used with the express or tacit approval of the association, that its agents were warranted in assuming that they might use such unlawful means in the future, that the association and its individual members would approve and tolerate such use whenever the end sought to be obtained might be best obtained thereby."** (187 Fed. 526.)

(2) The Association, through its Executive Board, its President and its Official Journal, actively encouraged and thus participated in the illegal proceedings at Prairie Creek, **while these proceedings were going on.**

(3) The Association, through its Official Journal and by resolutions of its Executive Board and of the Convention of all its delegates, expressly and officially recognized that the active participants in the Prairie Creek affair had acted **as its representatives and in its behalf** in carrying out its aims, objects and purposes.

Evidence that a principal has approved of his agent's acts may be considered in two legal aspects:

First, as an adoption of what had been done without prior authority. This is ratification proper, in its legal sense—

Second, as evidence that the acts in question were authorized by the principal from the beginning. (See Buckeye Powder Co. *vs.* Hazard Powder Co., 205 Fed. 827, 830.)

Although the evidence of ratification in the case at bar was competent and conclusive in both aspects, it is in the second that the evidence here has its principal importance.

(4) That the failure by the Union to express its official disapproval, or to exercise the control which it had over the District and Local Branches, officers and members, and its failure to take steps to discipline them and thus prevent a recurrence of the same thing in other fields, was of itself evidence both of ratification and that what had been done was with the authority and approval of the Union.

Bearing in mind that the verdict in this case is amply sustained by the evidence on the first three heads, it remains for us to consider the Federal decisions relative to the failure by the Union to exercise control and discipline over its members and branches.

In the very nature of things where damage to property is caused by riots in connection with Labor Disputes, it is most difficult to fix by direct evidence the responsibility for these activities on the men "higher up."

There are very few cases where it can be shown that the President and Executive Council of a large Labor Union has ever been found, on the ground, inciting the members to riot or violence. Labor leaders in their public addresses and in their published organs practically always counsel peace and long suffering.

If under the law no trade union or no union leader could be held responsible for damage in labor disputes without direct evidence that he or it personally incited the particular disturbances which gave rise to the trouble, labor leaders would be for all practical purposes beyond the reach of the law. The damage done in labor disputes is caused for the most part by entirely irresponsible parties, members of the union or their sympathizers, many of whom at the time of the fracas are unrestrainable by their leaders, even if the latter wished to restrain them.

Under the law the test of the responsibility of the Union and of the higher officials thereof, for activities of the members in a labor dispute, is gauged not only by whether or not the Union official specifically incited the particular activities, but by a broader test.

Did the Union officials and the Union organization set in motion the machinery which in the natural course of events and according to previous experience would lead to the injurious results?

The cases have held that when a labor union becomes engaged in a labor dispute, it is not sufficient that the officers merely counsel peace and deplore violence. If violence results they are responsible, provided they put in motion forces which they have reason to believe would get beyond their control.

The law recognizes the ease with which, by merely advocating peaceable methods, union officials could escape responsibility for themselves and their organization for what they well knew, hoped and expected would happen, and the cases have made a more strict test than mere words.

Where a Union declares or conducts a strike in which injury to property is done by members of the union or by those acting in conjunction with them, the cases hold that the Union and its officers will be held responsible, unless the damage done is such as might not readily be foreseen by them when they set in motion the forces which have caused it, **and unless, also, as soon as they learn of the illegal acts, whether during their commission or after the damage has been done, they clearly show their good faith and disapproval of what has happened, not merely by words but by actions.**

After striking workmen have burnt down their employer's property it is not sufficient for the President of the Union to say, "we deeply regret this." The Union must go farther. It must disown the offending members and must subject them to immediate discipline or expulsion from the Union, not only to show in unmistakable form that the Union did not approve the acts or surreptitiously sanction them, but also to show to the members what will happen to them in future disturbances provided they use the same illegal measures.

When the German Submarine Commander sank the Lusitania, no one was convinced that the German

Government was sincere in its expressions of regret, when at the same time he heard that the Submarine Commander had been decorated with the Iron Cross.

If this Commander had been degraded from his rank, and expelled from the Navy, then the German Government might have convinced the World that his action had been done on his own initiative, and not on orders of the German Government.

So also, when the members of a labor union in the course of strikes burn or destroy property, it is idle for Union officials to deplore it and to disclaim responsibility, provided they keep the ringleaders in the employ of the Union, as members thereof, and honor them with appointment to responsible offices in the organization.

The foregoing considerations embody such a world of common sense and are so obvious that it would seem unnecessary to cite authorities in support of them.

Since the present is the first United States case in which the Union itself has been held to be responsible for damages, there are naturally no decisions on the precise point here involved in the Federal Courts.

The Hatters' Case, Loewe *vs.* Lawlor, 208 U. S. 274, was a suit, not against the Union, but against individual members thereof, many of whom had not taken any active part in the events which resulted in the damage to plaintiffs.

That case, however, on final appeal turned principally on the question of agency, the feature relied on by this Court in sustaining the liability of the defendants being that they continued to belong to the Union and pay Union dues after they had a right to know that the Union was doing the illegal things on account of which the suit was brought. (235 U. S. 522.)

In the case at bar the converse is true; the Union would be liable even though it had not proven by direct testimony that the Union did or specifically authorized the acts complained of. This authority is necessarily inferred

from the fact that the Union continued as officers and members those whom it knew had participated in the illegal acts.

In a number of instances the question of responsibility of the Union has arisen in connection with the granting or continuing of injunctions against a Union itself or against its higher officials.

In Southern Railway Company *vs.* Machinists Local Union, No. 14, 111 Fed. 49, Judge Hammond in the Circuit Court for the District of Western Tennessee granted an injunction against the defendant labor union and its members to restrain them from unlawful interference with the rights of non-union workmen employed by the Railway Company. The syllabus of this case contains the following:—

> "A Labor Union conducting a strike which maintains pickets and guards around the works of a former employer for the avowed purpose of preventing non-union workmen from working therein cannot avoid responsibility for personal assaults on such workmen and other unlawful acts committed in direct furtherance of such purpose because such acts were not committed by its orders and perhaps not by its members, nor because it passed a resolution not made public counseling that peaceable means alone be used, **when it did not in any public way protest against or disown such acts or take any measures to assist in preventing or punishing them.**"

The Court said (page 53), in the course of his opinion:—

> "No steps were taken to expel from the Union these violators of the law and of the personal liberty of the 'scabs' and their employers, or to censure them or to discover them to the police. Absolutely nothing was done in this way to disown these acts and now their only reliance is that the original meetings of the Union counseled and directed that there should be no violence, of which it is not shown that the 'scabs' ever had any notice."

Another very instructive decision is that in Allis-Chalmers Co. *vs.* Reliable Lodge *et al.*, 111 Fed. Rep. 264, by District Court for the Northern District of Illinois. In this case the Court clearly applied the principle that Actions speak louder than Words, holding that a Labor Union could not escape responsibility for acts of its members or even of persons not members who were incited by the members' acts, merely by passing resolutions and counseling platonic methods. In the course of his opinion Judge Kohlsaat thus stated the law (p. 267):—

> "Under all the conflict of evidence in this case, it is undeniable that the defendants, or some of them, and their confederates, have conspired to and have greatly intimidated complainant's workmen, and thereby have intended to and have done great and irreparable injury to complainant's business and property, largely in excess of the necessary jurisdictional amount. It is conceivable, theoretically, that patrols or pickets could be maintained upon the platonic basis claimed by the defendants; but the evidence, taken as a whole, leaves no doubt in the mind of the Court that the name was not misapplied in this case. Here a siege exists. Probably to some extent the acts of violence complained of have been done by persons not members of the union and not connected in any manner with the striking workmen, but in some of the cases the evidence is so specific that it cannot be overlooked. It is true that at such times, when excitement runs high, the public mind is inflammable, at least among such persons as usually attach themselves to strikers. It is also true that the criminal classes take advantage of such occasions to commit, under the cover of honest men, dastardly and cowardly acts. These facts applied to this case make it apparent that the conduct of the defendants was calculated to work a serious wrong to complainant. In the judgment of the Court, the pickets were in some cases themselves

guilty of intimidating complainant's workmen, and were the indirect, if not the direct, inspiration of like acts and of violence by others. It is conceded that these pickets were appointed and directed by officers and members of defendant lodges. That a conspiracy existed among a number of these officers and members to stop, and thereby injure, the business of complainant, by intimidation and violence, is evident. In a conspiracy of this character, where it is difficult to even learn the names of the individual members of the lodges, the active co-operation of the individual members in the conspiracy is difficult to establish by direct proofs; but their acquiescence in, and connivance at, the methods pursued by their officers and leaders, is easily established by the results sought and accomplished."

Union Pacific R. Company *vs.* Ruef, *et al.*, 120 Fed. 102 C. C. District of Nebraska, was a bill in Equity to enjoin the defendants from interfering with plaintiff's business. In the course of his opinion, Judge Munger, said (page 126):—

> **" The evidence does not disclose that any of these unlawful acts and acts of violence were ever disapproved of by respondents, that the guilty ones were remonstrated with, that their strike benefits had been stopped or any protest had been made against such unlawful acts.** On the contrary, the evidence shows that William Richilieu, who appears not only to have been an instigator, but an actual participant in several assaults, was thereafter placed in charge of the pickets as captain."

The Court, quoting from Allis-Chalmers Co. *vs.* Reliable Lodge, heretofore cited, continued as follows:—

> "In a conspiracy of this character, where it is difficult to even learn the names of the individual members of the lodge the active co-operation of the indi-

vidual members in the conspiracy is difficult to establish by direct proofs; but their acquiescence in and connivance at, the methods pursued by their officers and leaders, is easily established by the results sought and accomplished. * * *

"In the light of these authorities it seems clear that all of the respondents who were members of the various organizations which established and maintained the picket line, as well as those who are shown by the evidence to have personally participated in the assaults and various acts of intimidation, must in this action be held chargeable with the results naturally flowing therefrom."

A separate opinion was delivered by Judge McPherson in which he laid down clearly the principles of law involved in connection with unlawful picketing, stating twelve propositions of law defining the right of employers and employees (pages 113–114).

On page 117, he calls attention to and lays weight on the fact that in none of the cases of lawlessness was the guilty man "informed against before the municipal authorities by any striker or was he subjected to any kind of discipline by the lodges or officers of the strikers." "It is one thing to advise peace and good order and gentlemanly conduct, but talking about and advising peace and good order and gentlemanly conduct and then taking no action against violence and drunkenness and assaults and blackguardism and profanity, to me do not square themselves" (page 117).

Again, on page 119, Judge McPherson states:—

"More than a dozen of the pickets were identified. In other cases they were identified as strikers or pickets. In other cases the assailants and violaters of the rules of decency were not known. But no man who has read the 1186 pages of evidence which I have read can have the slightest doubt but that these assaults, and these acts of violence, and these threats, and these blasphemous denunciations would

not have occurred but for this picketing. Many of the defendants took no part in them, being honorable men. No doubt whatever is there in my mind but that a great many of the defendants deprecate it. **But deprecation ought to be accompanied by words of denunciation. But both deprecation and denunciation ought to be accompanied by some affirmative acts to stop it, or at least to cut loose from such men."**

In Allis-Chalmers *vs.* Iron Molders' Union, No. 125, 150 Fed. 155, the 2nd Paragraph of the Syllabus is as follows:—

"A Labor organization, or its officers, or a committee which selects members to act as pickets during a strike, may become responsible for the unlawful acts of such pickets or their violation of an injunction, although they were instructed in good faith to observe the injunction, and do no unlawful act where with knowledge that the instructions have been disobeyed by particular persons they are still kept in the service."

Phillips Sheet & Tin Plate Co. *vs.* Amalgamated Assoc. of Iron Steel & Tin Workers, 208 Fed. 335 (U. S. D. C. Ohio, 1913), was a case in which an injunction having been issued against the defendants during a strike, a number of them came up for a final hearing for contempt for violation of the injunction. With one exception the accused were all Union men. The Court in the course of his opinion laid weight on the fact that of all the strikers and sympathizers "who were present when the acts of violence occurred, no one entered a protest, or endeavored to bring the assailant to justice. When called upon to point him out they protected him by standing mute."

In the course of his opinion the Court further stated:—

"Some of them appear here, as witnesses, to screen the guilty party. * * * The assaults which

were the most reprehensible and vicious occurred in proximity to and in view of the strike headquarters. In so far as the present record discloses, no effort has been made by organized labor to bring any assailant of any of plaintiff's employees to justice. * * * The strike Committee, the officers of the Union, and the managers of the strike have an active duty to perform. That duty does not end in instructing strikers or sympathizers, or both, to observe and not to violate the injunction, ever though the instructions be given in good faith. The rational rule prevails that a labor organization, or its officers, or a committee which selects members to act as pickets during a strike may become responsible for the unlawful acts of such pickets or their violation of an injunction, although they were instructed in good faith to observe the injunction and do no unlawful act, **where, with knowledge that the instructions have been disobeyed by particular persons, such persons are still kept in service.** The directing officers of a union, whose members are on a strike have been enjoined from intimidation, will themselves be deemed guilty of a violation of the injunction if they do not prevent (if they reasonably can do so) its violation by those under their control, or if they countenance acts of intimidation and refrain from using, so far as good faith would suggest, the means which they possess of preventing such acts."

Another decision which brings out with entire clearness the principle here under discussion, is Alaska Steamship Company *vs.* International Longshoremen's Association *et al.*, 236 Fed. 964 (D. C. W. W. Wash.).

This was a bill for an injunction to restrain acts of intimidation etc., in connection with the strike at the plaintiff's piers. The individual defendants were the officers of the International Union and Local Unions of the Longshoremen's Association.

The International Union was a voluntary association

composed of Districts with an organization somewhat similar to the United Mine Workers of America. An injunction was issued against the officials of the Union and its members, the Court holding that a tacit understanding was sufficient to constitute a conspiracy and that the purpose of the conspiracy and the responsibility therefor was to be judged not solely by what the officials of the Union did but also by what they failed to do. The 8th paragraph of the Syllabus is as follows:—

> **"A trade Union, conducting a strike, is liable for the unlawful acts of members and others associating themselves with the strikers, unless such acts be disavowed, and, in the case of members, the offenders be disciplined or expelled."**

The Court held that the acts of the members of the Union in the furtherance of the conspiracy were acts of the Union itself. Judge Netterer in the course of his opinion, said:—

> "While there is no testimony that any of these acts were expressly authorized, there is no evidence that the acts were disapproved, or members disciplined or expelled. The testimony does show that the defendants did have control of the situation, and did not exercise their influence or power to correct the irregularities or disavow the acts until the issuance of the temporary restraining order and service upon the defendants, when all overt acts ceased, which considered with what defendants did do, confirms the conclusion that the acts were under the authority and within the control of defendants. **When persons or parties set in motion machinery for the purpose of shaping sentiment they cannot take the benefits without being burdened with responsibilities.** Such parties thereby assume the burden of controlling such agency, if within their power; and if, perchance, some persons unauthorized, acting with defendants, commit unauthorized acts, it is incumbent on the

defendants to show such fact, and, if committed by members under the control of the Association, **to disavow such acts by causing such offending members to be disciplined or expelled."**

A recent decision on the subject, is Kroger Co. *vs.* Retail Clerks' International Protective Assn. Local No. 424, *et al.*, 250 Fed. 890, 896, in which Judge Trieber said:—

"Now, there is one other question which is of considerable importance. The evidence connects only a part of the defendants with these unlawful acts. But there is no question of law better settled than that an agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means, is an unlawful conspiracy, and the act of any one person, who is a party to that agreement, any overt act to carry out its objects, the objects of the unlawful agreement, before the object of the conspiracy has been abandoned, is the act of every member thereof. The evidence shows that all of the defendants, with the exception of two, to whom I shall refer later, were members of this Union. Some of the speeches made at the meetings, as shown by the evidence, certainly indicate that there was an attempt to inflame the minds and arouse the passions and prejudices of the members against the plaintiffs. While it is true that there is nothing to show that any of the speakers directed them to commit acts of violence, on the contrary, the language used was always to act in a peaceful and quiet manner, yet the evidence shows that many of them did not do so, and when reports were made that so many stores had been closed it seemed to meet the approval of all. The chief organizer, who presided at the meeting, Mr. Baker, commended them for what they had accomplished; a man named Sarjeant, although not a member of this Union, told them to continue to work until they had closed every one of the stores of the plaintiff, as that was the

only way the employers could be induced to do justice to their employees.

"But, no matter what advice was given, acts of violence were committed by members of the Union. They were committed for the purpose of carrying out successfully the object of the Union, that is, to secure a successful strike, or otherwise to put the plaintiff out of business, and every member of that Union, the defendants here, is equally responsible for the acts of the others. **No evidence has been introduced to show that any of those who committed any of the acts which were reported to the Union, were reproved, or their actions disapproved, by the officers of the Union or any of the members;** so the Court finds that each of the members of this organization is just as responsible for the unlawful acts of those who committed them as if they had done them in person, and for this reason the temporary injunction must go against all of them, or against none. The Court is of the opinion that the temporary injunction should issue against all members of the Union who are defendants in this case."

See also Franklin Union No. 4 *vs.* People, 220 Ill. 355;

Illinois Cent. R. R. Co. *vs.* International Ass'n. of Machinists, 190 Fed. 910;

Stephens *vs.* Ohio State Telephone Co., 240 Fed. 759, 778;

Niles-Bement Co. *vs.* Iron Moulders Union Local No. 68, 246 Fed. 851, 863–864.

FIFTH.—**The Destruction of the Business and Property of Defendants-in-Error was Accomplished in the Course of an Unlawful Combination and Conspiracy in Restraint of Interstate Commerce.**

We do not contend that the United Mine Workers, while "lawfully carrying out the legitimate objects" specified in its Constitution, would be an unlawful combination or conspiracy in restraint of interstate commerce.

Neither these objects, nor the means specified to attain them are necessarily unlawful.

Although the increase in wages and shortening of hours of work are usually calculated to raise prices, this effect, if attained by lawful means, is indirect. Any restraint of trade resulting would, in such case, be a reasonable restraint.

Although, also, one of the means provided is strikes, such are not in themselves unlawful.

Indeed, it is now widely recognized that the existence of trades unions is calculated in the long run to better the conditions of commerce rather than to restrain it, but only so long as they are conducted by lawful means.

We make no claim that a carpenter working at his bench, or a farmer at his plow, or a miner digging coal in a mine are engaged in interstate commerce.

When, however, as appears in the picture in the United Mine Workers Journal of July 16th, 1914 (Record page 3406), the miner discards his pick for a high powered rifle, and joins with 1500 of his fellow Unionists in destroying a mine and tipple for the sole and express purpose of keeping the product from shipment to other states, driving away and killing the employees in order to prevent them from producing the commodities so to be shipped, and burning cars of coal on the railroad tracks already billed to other states, it is perfectly clear that such miner is engaged in a conspiracy in restraint of interstate commerce and that the organization to which he belongs, which instigates him and for whose

benefit he does the illegal acts, is a combination in restraint of interstate commerce.

The other side confuse motive with intention.

When a hunter shoots a duck, his motive is to get food or to satisfy his vanity by proving his skill and superiority.

His intention is to kill the duck.

The motive of the Unionists who destroyed plaintiffs' property and business may have been to benefit their craft by unionizing all the mines of the country, just as that of Germany was to insure the spread of Kultur throughout the world.

Their immediate purpose and intention was to prevent plaintiffs' from shipping their coal to other states in competition with that there mined with Union labor.

Plaintiffs-in-error also stress the fact that the immediate participants "had not the slightest intent to deal with or interfere with interstate commerce."

What they really mean is that neither Pete Stewart, Red Doyle or Sandy Robinson had ever read Gibbons *vs.* Ogden.

They intended, however, to burn up the cars of coal consigned to Nachitoches, Louisiana.

> "The conspirators must be held to have intended the necessary and direct consequences of their acts and cannot be heard to say to the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are legal contemplation chargeable with intending that result."
>
> U. S. *vs.* Patten, 226 U. S. 525.

Furthermore, it is not the specific intent of the immediate participants which is important, but the collective intent, the intent of the association which inspired instigated and conducted the whole affair.

Nothing could better illustrate the wisdom of Congress

in including as defendants in suits of this kind unincorporated associations.

In cases of this kind it is the association that is the essence of the illegal combination.

The immediate participants, to whom the other side would restrict our remedy, are usually but the ignorant tools, often having no specific intent but a blind rage inspired and instilled into them by the brains of the Association higher up.

With the foregoing distinctions in mind, it would seem unnecessary to discuss at length the authorities relied on by the other side.

We do not consider it at all necessary in order to sustain this judgment, to regard the Knight case as modified, much less overruled, by the later decisions.

In that case there was no evidence of a specific intention to restrain interstate commerce or to prevent other people from engaging therein. The question was simply whether the bare acquisition under one control of a number of competing sugar plants, without evidence of illegal means used or of a purpose to lay any plant idle, in itself amounted to an attempt at a monopoly or a combination in restraint of trade.

If in that case it had appeared, as it did in Pennsylvania Sugar Refining Co. *vs.* American Sugar Refining Co., 166 Fed. 254, in Shawnee Compress Co. *vs.* Anderson, 209 U. S. 423, or in U. S. *vs.* Reading Co., 226 U. S. 324, that the purpose was to close the plants up or to prevent them from competing with the defendant, the Court which decided the Knight case would certainly have held the combination illegal.

Even so, the case would not come within the most flagrant of these cases, ' the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes."

Loewe *vs.* Lawlor, 208 U. S. 274.

It is in the latter class that the combination here involved falls.

Where a specific intention to suppress or restrain interstate commerce is present; where, as here, it is conclusively shown that the sole purpose of the illegal acts was to prevent the shipments of commodities from one state to another, then every means to attain that result is a direct and unreasonable interference.

> "As to the suggestion that the matters alleged to have been contemplated would not have constituted an offense if they had been done, it is enough to say that some of them conceivably might have been adequate to accomplish the result, **and that the intent alleged would convert what might on their face be no more than ordinary acts of competition or small dishonesties of trade, into a conspiracy of wider scope,** as has been explained more than once."
>
> Nash *vs.* U. S.. 229 U. S. 373.

The fact that coal mining is not Interstate Commerce in no way goes to show that the destruction of a coal mine for the purpose of restraining Interstate Commerce does not have that effect, any more than the fact that "labor is not a commodity" permits laborers to burn and destroy things which clearly are.

If a state were to pass a law prohibiting the Interstate shipment of commodities made with child labor, while permitting the sale of such articles within the state, could there be the slightest doubt as to its unconstitutionality?

In such case the necessary inference would be that the state intended to discriminate against and thus interfere with Interstate Commerce, and such an intent being found, is conclusive of unreasonableness.

Neither State nor United Mine Workers can be heard to say that the result he intends is not a direct result.

If a State law required the closing of all coal mines shipping to other states, permitting those to operate which shipped within the State, would plaintiffs in error contend that this law was constitutional as regulating production merely?

Ever since the decision in Welton *vs.* Missouri, 91 U. S. 275, 282, it has been settled that a State Statute **discriminating** against articles which have come from other States or are destined thereto, is unconstitutional even though it be of a nature which would bring it, but for the discrimination, within the recognized power of the State.

In such cases the attempted discrimination shows a conclusive intent by the State to restrain interstate commerce and such intent being shown, every restraint thereby produced is held to be direct and unreasonable.

See also Darnell *vs.* Memphis, 208 U. S. 113.

> **"If a State, with its recognized powers of government, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess."**
>
> *In re* Debs, 158 U. S. 564, 600.

Plaintiffs in error make a labored argument to show that by the oft-recurring expression "prevention of the mining of coal by non-union men," the Unionists referred merely to the fact that they were going peaceably to persuade all outsiders to join their organization. This result, it is suggested, would effectively and very peaceably and properly prevent the mining of Union coal, since after the conversion of the non-Unionists all coal would be mined Union and commerce would go merrily on. (Brief, page 139.)

How, may we ask, was the condition of the workmen at Prairie Creek to be improved, or the membership enlarged by burning up our mines, destroying permanently the opportunity for 900 men to work therein?

Do counsel seriously contend that, when Pete Stewart, the President of District 21, stood in front of Magee's drug store at Midland on May 25th two days after the Convention at which White made his speech, and said that the scabs were to be run out of Prairie Creek and

that he would take a gun and die before he would see it run open shop, he was ingenously referring to the fact that the scabs were all to be converted to Unionism and that when he had persuaded them all to join it would no longer be scabs or non-union men who were digging coal at Prairie Creek?

Or that Delegate Feehan had this idea in mind when he said to the 1908 Convention:—

> **"I am very desirous of lending all of my efforts to prevent, if possible, the production of non-Union coal"** (580).

The facts proved in the case at bar showed beyond question a combination and conspiracy in restraint of Interstate Commerce.

First, because the Acts done so necessarily produced that result that no proof of specific intent was necessary.

Second, because such specific intent was conclusively proved.

Although the trial Judge left it to the jury to say whether the acts had been for the purpose of preventing Interstate shipments or for some other purpose, he should properly, as we shall hereafter show (*infra*, pp. 264–276), have given binding instructions on this point for the plaintiffs.

SIXTH.—**The Trial Judge did not Err in His Supplemental Instructions to the Jury.**

No exception at all was taken by the other side to that part of the charge of the trial Judge quoted by counsel for plaintiffs in error on pages 147, 148 of their brief, nor does any assignment or specification of error in this Court refer either to this part of the charge or to any part of the prior charge.

The only portion of the charge assigned as error is that part quoted on pages 149, 151 of the brief, and even this assignment of error does not state whether the error complained of consists, as the exception taken at the time clearly indicated, of a misstatement of the law, or, as the brief of plaintiffs in error now contends, of its supposedly coercive tone.

After the Judge's principal charge, the jury came back twice for additional instructions, the first time on November 21st and the second time on November 22nd.

In the November 21st additional instruction, the questions by the jurors were directed to the legal liability of the National Union for the acts of its members and officers. In his answers to these questions the trial Judge summarized the statement of the law which he had given in his principal charge, stating, in effect, that the Union could be held responsible if the acts resulting in the destruction of the property had been done by the association, its individual members, local or district, or members carrying out the purpose of the unlawful agreement, "to prevent the sale of coal in the different states in Interstate Commerce in competition with union-mined coal."

> "JUROR JOHNSON:—You said where two or more were implicated in this and done it, the whole union is responsible?
>
> "THE COURT:—Yes, if they are carrying out the purposes." (Rec., 3234.)

Although counsel for both sides were present when this occurred, no exception whatever was taken by plaintiffs in error, either at the time, nor even subsequently, nor is this assigned as error.

On the following day, November 22nd, the jury came back again and the Court impressed on them their duty to agree on a verdict.

He also said that, under the right recognized in the Federal Courts to say what the Court believes in relation to the facts, they were advised that this Court is of the opinion that the facts in this case "justify you in the conclusion overwhelmingly" that it had been the Union's policy to restrain competition of non-union coal, that the strike had been called and the force put in motion which dstroyed this property by those who were the instrumentality of the Union for this purpose. He also said that he had not a thought that there would have been trouble there if it had not been for the prevention of the mining of non-union coal, and that if it were his duty to decide it he would decide it there.

He then continued (3236):—

> "**Now you are not bound by my opinion.** I have a right to give you my judgment, however. **You are the sole and exclusive judges of the facts and it is for you to determine these issues of fact independent of my judgment and this Court believes you ought to determine it** and under your oaths as jurors agree upon a verdict."

The Court then told them that his opinion on the legal question as to the responsibility of the greater organization was subject to review by the higher Court and urged them to agree on a verdict.

The trial Judge did not mean by this last statement, as counsel for plaintiffs' in error contend on page 152, that the United Mine Workers, upon the evidence, were responsible as a matter of law.

In the preceding sentence he had told the jury that they were the exclusive judges of the **facts.**

He then said:—

> "If there is any question **about the law** on the responsibility for this, responsibility of the greater organization, that is for the higher Court to say."

He was merely contrasting the "facts" with the "law."

On the day before, in answer to questions by jurors, the Court had said (3234, quoted in brief of plaintiffs in error pp. 147–148) that the organization was liable for acts of its officers and members only in case these acts were done in carrying out the purpose of the unlawful agreement, to which statement on his part no exception had been taken by defendant, although on the day before they had taken the two following exceptions to the Judge's principal charge (3220–3221):—

> "MR. WARRUM:—The defendants separately except to the instruction which submits to the jury the question that the United Mine Workers of America in its entire membership can be held responsible for the conduct of a local strike when violence is used without showing that the entire membership participated in the wrongful acts, and without full knowledge of the same ratified such wrongful conduct before the institution of this suit.
>
> THE COURT:—Exception allowed.
>
> "MR. WARRUM:—And the defendants severally except to that part of the court's charge which submits to the jury the question that the controversy between the miners and the plaintiffs in question was under the control of the International Association and its officers, and that they were charged with the duty of preventing violence and with the responsibility of any violence that occurred or any wrongful acts that were committed.
>
> "THE COURT:—Exception allowed."

It was to the questions of law presented by these exceptions that the Trial Judge obviously referred, and on which he said that the higher court would have to pass.

Certainly nothing could better illustrate the wisdom of the rule requiring a timely exception to call an objectionable charge to the Court's attention and give him a chance to correct it, than this present attempt to spell in the Judge's charge a thought that he never had when he delivered it. The charge was clearly understood by all who heard it, and counsel for defendant in no way regarded or objected to it, either as coercive or as a holding that, as a matter of law, the Union was liable.

All that Judge Elliott said was that he did not then intend to discharge the jury; that in his opinion the whole trouble had been started and engineered by the Union in order to prevent this non-union coal from coming into competition with union coal mined in other states; that the jury were the sole and exclusive judges of the facts and it was for them to determine **these issues of fact** independent of his judgment; that the higher Court would ultimately settle any question of the law of agency involved, but that the question could never get up to this Court until the jury had rendered their verdict, and that they were as well able to arrive at one as any other jury would be.

The trial Judge had evidently got the impression in some way that the jury expected, if they did not agree promptly, that they would be allowed to go home.

He very properly corrected this impression.

Counsel for plaintiffs' in error, by extracting the last twelve words of this charge, and printing them as a separate paragraph, separated from the sentence of which they formed a part, seek to convey the impression to this Court that the Trial Judge ended his charge with the peremptory command (Brief of plaintiffs in error p. 155, see also 151):—

> "You now return to your jury rooms and bring in a verdict."!!!

This entirely misrepresents the trial Judge. What he really said was this:—

> "You see the importance of the situation **and I now urge you** * * * that you now return to your jury rooms and bring in a verdict."

The punctuation in the charge is that of the stenographer.

What is written as the last sentence, on examination proves not to be a sentence by itself, but part of the long sentence beginning "You see."

The way in which the trial Judge in fact concluded the charge should, it is submitted, properly be punctuated as follows:—

> "You see the importance of the situation **and I now urge you** (with the idea of doing the right thing and putting this matter in that condition that a trial of the case with a legitimate end in which a verdict of the jury will place it, and with a knowledge and feeling of a responsibility and that that responsibility is with you) **that you now return to your jury rooms and bring in a verdict."**

(1) *The Instructions were Proper.*

Under the decisions of this Court the Trial Judge was entirely within his province in delivering this supplemental instruction.

In Vicksburg & Meridian Railroad Co. *vs.* Putnam, 118 U. S. 545, 553, Justice Gray said:—

> "In the courts of the United States, as in those of England from which our practice was derived, the Judge, in submitting a case to the jury, may, at his discretion, **whenever he thinks it necessary to assist them in arriving at a just conclusion,** comment upon the evidence, call their attention to parts of it which he thinks important, and express his opinion upon the facts; and the expression of such an opinion, when no rule of law is incorrectly stated, and all matters of fact are ultimately submitted to

the determination of the jury, cannot be reviewed on writ of error. Carver *vs.* Jackson, 4 Pet. 1, 80; Magniac *vs.* Thompson, 7 Pet. 348, 390; Mitchell *vs.* Harmony, 13 How. 115, 131; Transportation Line *vs.* Hope, 95 U. S. 297, 302; Taylor on Evidence (8th ed.), Par. 25. The powers of the Courts of the United States in this respect are not controlled by the statutes of the State forbidding judges to express any opinion upon the facts. Nudd *vs.* Burrows, 91 U. S. 426; Code of Georgia, Par. 3248. The exceptions to so much of the Judge's charge as bore upon the liability of the defendant cannot therefore be sustained."

In United States *vs.* Reading Railroad, 123 U. S. 113, the trial Judge had stated that **he was of the opinion that the jury should not under the circumstances find for the plaintiff,** but nevertheless left it to the jury to decide. Of this Justice Gray said:—

"Trial by jury in the Courts of the United States is a trial presided over by a judge, with authority, not only to rule upon objections to evidence and to instruct the jury upon the law, but also, when in his judgment the due administration of justice requires it, to aid the jury by explaining and commenting upon the testimony, and even giving them his opinion upon questions of fact, provided only he submits those questions to their determination. Vicksburg & Meridian Railroad *vs.* Putnam, 118 U. S. 545; St. Louis &c. Railway *vs.* Vickers, 122 U. S. 360."

Simmons *vs.* United States, 142 U. S. 148, 155, was a criminal case for embezzlement. At the close of the opinion this Court said:—

"The only other exception argued is to the statement made by the judge to the second jury, in denying their request to be discharged without having agreed upon a verdict, that he regarded the testimony as convincing. But at the outset of his

charge he had told them, in so many words, that the facts were to be decided by the jury, and not by the Court. And it is so well settled, by a long series of decisions of this Court, that the judge presiding at a trial, civil or criminal, in any Court of the United States, is authorized, whenever he thinks it will assist the jury in arriving at a just conclusion, to express to them his opinion upon the questions of fact which he submits to their determination, that it is only necessary to refer to two or three recent cases in which the judge's opinion on matters of fact was quite as plainly and strongly expressed to the jury as in the case at bar. Vicksburg &c. R. R. *vs.* Putnam, 118 U. S. 545; United States *vs.* Phila. & Reading Ry., 123 U. S. 113; Lovejoy *vs.* United States, 128 U. S. 171."

In Patton *vs.* Texas & Pacific Ry., 179 U. S. 658, 660, Justice Brewer said:—

> **"The (Trial) Judge is primarily responsible for the just outcome of the trial. He is not a mere moderator at a town meeting, submitting questions to the jury for determination, nor simply ruling on the admissibility of testimony, but one who in our jurisprudence stands charged with full responsibility."**

See also Young *vs.* Corrigan, 208 Fed. 431, 438, and cases cited.

St. Louis etc. Ry. *vs.* Vickers 122 U. S. 360.
Rucker *vs.* Wheeler 127 U. S. 85, 93;
Lovejoy *vs.* U. S. 128 U. S. 171;
Allis *vs.* U. S., 155 U. S. 117 (hereafter discussed).
Aerheart *vs.* St. Louis, etc., R. Co., 99 Fed. 907.
Freese *vs.* Kemplay, 118 Fed. 428, 430.

(2) No Proper Exceptions were Taken by Defendants.

A further conclusive reason, however, why this assignment of error cannot be sustained, is that no proper exception was taken to it at the time, nor was the attention of the Court in any way called to the contention now made by the plaintiffs in error,—that "this charge amounted to a peremptory instruction to the jury to return a verdict against the defendants," and was "coercive in its tenor and terms." (Brief of plaintiffs in error, page 151.)

What in fact happened is shown by the Record, page 3236.

After the charge by the Court quoted in the brief of plaintiffs in error, the following took place:—

> "MR. GRANT:—May I take an exception to that part of the charge with reference to the great conspiracy and also that part which is to the effect that the organization put that in force?"
>
> "THE COURT:—Yes, sir; in the opinion of the Court you are entitled to your exception.
>
> "MR. GRANT:—I just desire to get an exception.
>
> "THE COURT:—The exception is allowed."

Not a word or a thought about any attempt at coercion, or peremptory instruction, or the withdrawal from the consideration of the jury of the question of union conspiracy *vs.* popular uprising which, in his principal charge, the Court had left to the jury (3211–3215) to the evident entire satisfaction of counsel for defendants. (3220–3221.)

The exception taken was directed solely at the question of the legal responsibility of the Union for the acts of its members and subordinate officers, which was the only part of the original charge to which defendant's counsel had excepted, (3220–3222). See exceptions quoted *supra*, page 246 hereof) and which they then evidently intended to preserve in spite of their apparent waiver thereof by failure to except to the Court's first supplemental instruction on the day before.

The present contention is an after thought of counsel, which did not suggest itself until a study of the record on appeal made it necessary to find some ground for review.

There is scarcely a volume of the Federal Reporter, published since the organization of the Circuit Courts of Appeals, that does not contain a decision sufficient as a precedent to overrule this assignment of error.

We are fortunate in having a decision by this Court on the precise point here involved, affirming a judgment rendered by Judge Sanborn when sitting as trial Judge in the Eastern District of Arkansas, Western Division.

Allis *vs.* United States, 155 U. S. 117, arose on a conviction of the president of a bank for making a false entry to his own credit, with intent to defraud the bank. It appeared from the bill of exceptions that after the jury had been deliberating for several hours the Court called them into the court room and inquired if they had reached a verdict. On being informed that they had not, the Court proceeded to re-read them some portions of the original charge and then went on to make some illustrative remarks, which on appeal, defendant contended amount to an argument on the question of intent, **in an effort to coerce the jury to a verdict for the government.** With regard to this this Court said:—

> "To the charge, of which the only portions preserved in the record are those just referred to, a single exception was taken in the following words: 'The defendant excepts to the action of the Court in recalling the jury and in arguing the testimony and in stating part of the testimony on certain points without stating the entire testimony.' It is now insisted that the Court expressed an opinion as to the inference to be drawn from the facts, argued the question of intent to the jury **and sought to coerce a verdict.** But the exception taken

is not sufficient to bring all these matters before us. **There is no intimation in the exception that the defendant at the time thought that the Court was trying to coerce the jury, or suggested that its language might have such an influence upon them. Evidently the claim of coercion is an afterthought from subsequent study of the record.** But it is settled that no such afterthought justifies a reviewing Court in reversing the judgment. A party must make every reasonable effort to secure from the trial Court correct rulings or such at least as are satisfactory to him before he will be permitted to ask any review by the appellate tribunal; and to that end he must be distinct and specific in his objections and exceptions. Rule 4 of this Court provides: 'The party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts, and those matters of law, and those only, shall be inserted, in the bill of exceptions and allowed by the Court.' Repeated decisions have emphasized the necessity of a strict adherence to this rule: 'However it might pain us to see injustice perpetuated by a judgment which we are precluded from reviewing by the absence of proper exceptions to the action of the Court below, **justice itself and fairness to the Court which makes the rulings complained of, require that the attention of that Court shall be specifically called to the precise point to which exception is taken, that it may have an opportunity to reconsider the matter and remove the ground of exception.'** Harvey *vs.* Tyler, 2 Wall. 328, 339. 'If it was intended to save an exception as to distinct propositions embodied in the instructions, the attention of the Court should have been directed to the specific points concerning which it was supposed error had been committed.' Moulor *vs.* Am. Life Ins. Co. 111 U. S. 335, 337. 'An exception "to all and each part" of the charge gave no information whatever as to what was in the mind

of the excepting party, and, therefore, gave no opportunity to the trial Court to correct any error committed by it.' Block *vs.* Darling, 140 U. S. 234, 238. See also Phoenix Life Ins. Co. *vs.* Raddin, 120 U. S. 183, and cases cited in the opinion; N. Y. & Colorado Mining Co. *vs.* Frazer, 130 U. S. 611; Anthony *vs.* Louisville & Nashville R. R., 132 U. S. 172. We see nothing in this case to withdraw it from the scope and control of this rule.

The Court also stated that even though Judge Sanborn's supplemental instructions "contained an expression of opinion, such expression is permissible in the Federal Courts. Simmons *vs.* U. S. 142 U. S. 148; Doyle *vs.* Railway Co., 147 U. S. 413."

It will be observed that the foregoing was a criminal case, and thus is a stronger precedent than a civil suit. It will also be noted that it was a case in which the instructions complained of were given after the jury had been recalled after several hours' deliberation.

Both the points heretofore suggested as an answer to the present contention of plaintiffs in error are flatly decided.

This Court held (1) that the Trial Judge might properly express his opinion on the facts and

(2) that the Appellate Court would not reverse on account of an alleged coercive instruction to which defendants' counsel, at the time, did not take an exception specifically calling the coercive nature of the charge to the Trial Court's attention.

The decision of the majority of the Circuit Court of Appeals followed a long line of decisions by the same Court.

In Lesser Cotton Co. *vs.* St. Louis etc. Ry., 114 Fed. 133, 140, coming up from Arkansas, the action was one for the destruction of buildings by locomotive sparks. The trial Court charged that in order to recover, the plaintiff must prove negligence on the part of the de-

fendant and such portion of the charge was excepted to at the close of the trial, but the exception was general and contained no statement that this part of the charge was erroneous because the plaintiffs were entitled to recover on account of a violation of the Arkansas Statute prohibiting labor on Sunday. The Court held that as the latter issue of law was not presented to or considered or ruled on by the trial Court, it could not be considered by the Circuit Court of Appeals. Judge Sanborn said:—

> **"In an action at law, this is a Court for the correction of the errors of the Court below, exclusively. Questions which were not presented to nor decided by that Court are not open for review here, because the trial Court cannot be guilty of any error in a ruling it has never made upon an issue to which its attention has never been called."**

In Southern Pac. Co. *vs.* Arnett, 126 Fed. 75, 77, 80, Judge Sanborn also said:—

> "The burden is on the plaintiff in error to establish the existence of those errors, and in the absence of proof by the record that a question of law arose, and that it was presented to and ruled upon by the Court below, no error is established, because none could arise concerning a question which was not presented, considered, or decided by the trial Court. Chicago G. W. Ry. Co. *vs.* Price, 38 C. C. A. 239, 250, 97 Fed. 423, 434; U. S. *vs.* Patrick, 20 C. C. A. 11, 17, 73 Fed. 800, 806; Lesser Cotton Co. *vs.* St. Louis, I. M. & S. Ry. Co., 52 C. C. A. 95, 105, 114 Fed. 133, 143; McCarty *vs.* U. S., 101 Fed. 113, 41 C. C. A. 242; Myers *vs.* Brown, 102 Fed. 250, 42 C. C. A. 320; South Penn Oil Co. *vs.* V. Latshaw, 111 Fed. 598, 599, 49 C. C. A. 478, 479; Jones *vs.* Buckell, 104 U. S. 554, 26 L. Ed. 841. * * *
>
> "Moreover, if this suit should be treated as an action for damages for a tort rather than for a breach of a contract, the judgment below cannot be reversed

on account of the error in the charge regarding interest. The entire charge of the Court concerning the measure of damages and the interest upon the damages to be allowed is contained in a single paragraph, and the only complaint of it before the jury retired was a general exception 'as to the measure of damages.' No exception was taken to the allowance of interest, nor was the attention of the Court in any way called to the question of law relating to it. **Counsel for the defendant by their silence waived any objection to the charge upon this ground,** and the error in this respect is not here for our consideration. **It was indispensable to the presentation of it to this Court that a SPECIFIC exception should have been taken which clearly pointed out to the trial Court the error into which it had fallen, and thus sharply called its attention to the question of law which counsel now seek to present.** Lincoln *vs.* Claflin, 7 Wall 132, 139, 19 L. Ed. 106; Cass County *vs.* Gibson, 107 Fed. 363, 367, 46 C. C. A. 341, 346."

In American Smelting & Refining Co. *vs.* Karapa, 173 Fed. 607, 608, Judge Sanborn thus summarized the law as laid down in the previous cases:—

"It is indispensable, to a review in the Courts of the United States of any ruling of the trial Court upon a request for an instruction to the jury, that it should be challenged by an exception taken and recorded at the time, to the end that the attention of the trial Judge may be **sharply** called to the question presented thereby, and that a clear record of his action and its challenge may be made. Hutchins *vs.* King, 1 Wall 53, 60, 17 L. Ed. 544; Pomeroy's Lessee *vs.* State Bank of Indiana, 1 Wall 592, 602, 17 L. Ed. 639; Newport News & Miss. Valley Co. *vs.* Pace, 158 U. S. 36, 37, 15 Sup. Ct. 743, 39 L. Ed. 887; Tucker *vs.* United States, 151 U. S. 164, 170, 14 Sup. Ct. 299, 38 L. Ed. 112; Potter *vs.* United States, 122 Fed. 49, 55, 58 C. C. A.

231, 237; Southern Pacific Co. *vs.* Arnett, 126 Fed. 75, 81, 61 C. C. A. 131, 137."

In Beiseker *vs.* Moore, 174 Fed. 368, 372–373, it was held that an exception to a part of the trial Judge's charge which had manifest reference to the disputed question of interest, which had always been the chief bone of contention between the parties, could not be made the subject of an argument on an error in the passage excepted to relative to deficiency of acreage. Judge Adams said:—

> "This charge and exception had manifest reference to the disputed question of interest, which had always been the chief bone of contention between the parties, and if they had any reference to the deficiency of acreage, they were so obscure as not to afford the basis for review. They at best for the defendants contained two subjects—one interest and the other discrepancy of acreage. 'When an exception is reserved to a charge which contains two or more disputed or separable propositions, it is the duty of counsel to direct the attention of the Court to the precise point of objection.' The rule is that the matter of exception shall be so brought to the attention of the Court before the retirement of the jury to make their verdict **as to enable the judge to correct any error if there be any in his instructions to them.** Mobile & Montgomery R. R. Co. *vs.* Jurey, 111 U. S. 584, 4 Sup. Ct. 566, 28 L. Ed. 527. The rigid enforcement of this rule, not only conduces to the orderly administration of justice, but is a consideration specially due to trial judges who have no other opportunity for correcting an inadvertent remark or erroneous statement of law, without granting a new trial and incurring the delays and expenses incident thereto."

In Jones *vs.* United States, 179 Fed. 584, 592, the same Court said:—

"In an action at law this Court is limited to the correction of the errors of the Court below. Questions which were not presented to or decided by that Court are not open for review here because the trial Court cannot be guilty of error in a ruling that it has never made upon an issue to which its attention was never called. In **Robinson & Co.** *vs.* **Belt, 187 U. S. 41,** 50, 23 Sup. Ct. 16, 19 (47 L. Ed. 65), the province of the Appellate Court is stated in the following language:

"'While it is the duty of this Court to review the action of subordinate Courts, **justice to those courts requires that their alleged errors should be called directly to their attention and that their action should not be reversed upon questions which the astuteness of counsel in this Court has evolved from the record. It is not the province of this Court to retry these cases de novo.'**

"An exception to this limitation has been admitted **in criminal cases** where, if a plain error has been committed by the trial Court absolutely vital to defendant's case, the Court will feel itself at liberty to correct it, although not presented in the record by proper objections and exceptions."

In Chicago Great Western R. Co. *vs.* McCormick, 200 Fed. 375, 378, Judge Hook said:—

"Complaint is also made of parts of the charge to the jury. The only one of which special mention need be made is that where the Court, in referring to the men and hand cars at the place of derailment, said:—

"'That fact of itself—the fact that he (the engineer could see them, or the fact that he did see them—is not of itself evidence of his contributory negligence.'

"The Court evidently meant that the fact referred to did not by itself establish contributory negligence, and not that it was not evidential.

Moreover, this view of the instruction was expressed in the exception taken by counsel at the time. **The exception did not direct the attention of the Court to the particular point of objection, and on appeal it is too late to enlarge or change it."**

See also

Railway Co. *vs.* Henson, 58 Fed. 531, 532;
St Louis etc. Ry. Co. *vs.* Spencer, 71 Fed. 93, 95;
Drexel *vs.* True, 74 Fed. 12, 14;
Schneider Brg. Co. *vs.* American Co., 77 Fed. 138, 149;
Kresel Co. *vs.* Sun Ins. Co., 88 Fed. 243, 249;
Board *vs.* Sutliff, 97 Fed. 271, 275;
Williams Co. *vs.* Schofield, 125 Fed. 916;
Southern Pac. Co. *vs.* Maloney, 136 Fed. 171;
Hinds *vs.* Roofing Co., 165 Fed. 339;
Hatcher *vs.* Ins. Co., 184 Fed. 23, 26;
Chicago, etc. Ry. *vs.* Frye-Bruhn Co., 184 Fed. 15, 18;
Southern Pac. Co. *vs.* Whitney, 194 Fed. 784, 788;
Mexico Co. *vs.* Larkin, 195 Fed. 495, 496;
Fisher Machine Works *vs.* Dougherty, 231 Fed. 910, 912.

The rulings in other Circuits are similar:—

Cass Co. *vs.* Gibson, 107 Fed. 363, 367;
Lafayette *vs.* Olsen, 108 Fed. 335;
Smith *vs.* Hopkins, 120 Fed. 921, 923;
Butte Mining Co. *vs.* Montana Ore Co., 121 Fed. 524, 527;
Porter *vs.* Buckley, 147 Fed. 140, 146;
Pennsylvania Co. *vs.* Sheeley, 221 Fed. 901, 905.

See also

Railroad Co. *vs.* Varnell, 98 U. S. 479;
Mobile etc. R. Co. *vs.* Jurey, 111 U. S. 584, 596;
Stewart *vs.* Wyoming Ranch Co., 128 U. S. 383, 390;

Jacobs *vs.* Southern Ry. Co., 241 U. S. 229, 237;
McDermott *vs.* Severe, 202 U. S. 600, 610;
U. S. *vs.* Fidelity Co., 236 U. S. 512, 529 (gude);
Guerini Stone Co. *vs.* Carlin Co., 248 U. S. 334, 348;
Fillippon *vs.* Albion Vein Slate Co., 250 U. S. 76, 82.

In Robinson *vs.* Van Hooser, 196 Fed. 620, 626, the Circuit Court of Appeals for the Sixth Circuit said:—

> "Defendants complain of a remark made by the Court to the jury, after it had announced that it could not agree. It was an inquiry whether an agreement could be reached as to any of the defendants **and a statement that it was almost a necessity that the jury should reach a verdict if it could.** The Court had rightly instructed the jury that it could find against less than all of the defendants, if the testimony did not justify a finding against all of them. Although counsel seem to have been present, no exception was taken, and the matter cannot be reviewed on error."

In Drumm-Flato Commission Co. *vs.* Edmission, 208 U. S. 534, 540, Mr. Justice M'Kenna said:—

> "Plaintiffs in error finally complain as ground of error of certain remarks by the Court which, it is contended, were prejudicial. The Supreme Court replied to this assignment of error that no objection had been taken to the remarks complained of. Counsel now say that to have made objection would have made 'a bad matter much worse.' But we cannot accept the excuse. We have examined the remarks complained of, and we do not think they had the misleading strength that is attributed to them. At any rate, it was the duty of counsel to object to them, and if then the Court made matters worse, or did not correct what was misleading or prejudicial, its action would be subject to review."

As to the effect of Rules 10 and 11 of the Circuit Court of Appeals, and Rule 4 of this Court, requiring the distinct statement in the bill of exceptions of the matters of law to be raised, and prohibiting the enlargement of an exception by the assignment of error, or of the exception and assignment by the argument, see also:—

Stewart *vs.* Morris, 96 Fed. 703, 705;
Columbus Co. *vs.* Crane Co., 98 Fed. 946, 951;
Louisville etc. Co. *vs.* McClish, 115 Fed. 268, 273;
U. S. *vs.* Rossi, 133 Fed. 380, 382;
Yazoo etc. Ry. Co. *vs.* Wright, 207 Fed. 281, 289.

Neither the exception taken at the time, the motion for judgment non obstante veredicto, nor even the assignment of errors contains any allusion whatever to the "matter of law" or to the specific ground for objection now sought to be raised.

The first objection, exception, statement, or intimation that the Trial Court's supplemental instructions amounted to a coercion of the jury, or to a direction of a verdict, or to a withdrawal from the jury of the main issue of fact—restraint of commerce *versus* popular uprising—previously submitted, **is found in the Brief of Counsel** in the Circuit Court of Appeals.

In Judge Hook's dissenting opinion he dismisses the absence of a proper exception on the ground that the Amendment to Section 269 of the Judicial Code, approved February 26, 1919, between the argument of the case in the Circuit Court of Appeals (December, 1918) and the decision by that Court (April 28, 1919), made such an exception unnecessary.

Judge Hook considers that the intention of counsel was evident and that the trial Court understood it.

Judges Sanborn and Trieber, however, regard the exception as clearly directed to another distinct phase of the supplemental charge, and not at all at the possibility of its being a "peremptory instruction to return a verdict against the defendants."

The mere fact that two out of the three judges of the Appellate Court differ with Judge Hook's view of the purpose and effect of the exception is of itself a conclusive demonstration that the exception was not clear enough to appraise the trial Judge that defendant's counsel considered the charge coercive. Certainly no exception can be considered clear or direct which two out of three appellate judges regard as covering solely another matter.

Judge Hook further regards the Amendment to Section 269 as making a most radical change in appellate practice and as practically dispensing with the necessity of specific exceptions.

It is submitted, however, that such was not intended to be the effect of the Amendment, the real purpose of which was not to modify the established rule requiring a timely exception to enable the Trial Judge to correct his charge, but to prevent the reversal of judgments on account of non-prejudicial errors covered by proper exceptions.

This recent act has no application to the question now under discussion, **but is precisely applicable to the question of misjoinder,** presently to be discussed.

A recent decision of the Circuit Court of Appeals for the Second Circuit fully supports our position.

In Storgard *vs.* France & Canada S. S. Corp. 263 Fed. 545, 546, counsel for the plaintiff in error urged a reversal because of a portion of the charge to which no proper exception was taken.

The Court (Ward, Rogers and Hough C. J.) disposed of this contention as follows:—

"It is contended that we may nevertheless consider the question in virtue of Section 269 of the Judicial Code, as amended by Act. Feb. 26, 1919 (Comp. St. Ann. Supp. 1919, 1246), which reads:

> "'Section 269: All of the said courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new

trials have usually been granted in courts of law. On the hearing of any appeal, *certiorari*, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties.'

"We do not construe the section as authorizing appellate courts to decide on the whole record whether exceptions have been taken or not. **The mischief it was intended to correct is just the opposite of overlooking defects due to negligence, ignorance or inadvertence, viz., the reversal of judgments because of errors, defects or exceptions which, though raised with technical accuracy, do not affect substantial rights."**

Rule 4 of this Court specifically prohibits the consideration of errors in the charge on a mere general exception and clearly the Act of 1919 was not intended to make any change in the long established practice of the Appellate Courts in refusing to reverse a judgment for an error in the charge, which, at the time it was delivered, counsel did not regard as important enough to prompt them to call the Court's specific attention to it.

Certainly no one, reading the Record in this case, can conclude that throughout the Trial, any one of the four counsel for the defendants showed lack of assiduity in protecting the rights of their clients by a proper exception whenever there was the remotest possibility of a reversible error.

When, after Judge Elliott's supplemental charge they merely renewed their exception to his reference to the "great conspiracy" and to the connection of the Union with it, it was because they found no other fault with the charge.

If, at the time, it had occurred to them that the Trial

Judge was overstepping his proper functions and was coercing the jury, they would have been instantly on their feet with protests and exceptions.

The effect of a charge on a jury depends to a great extent on conditions at the moment, and on the manner in which the charge is delivered. This can never be exactly appreciated by an appellate tribunal, as it can by those present at the time. Hence the wise rule that a judgment will not be reversed because of a point in a Trial Judge's charge which at the time did not strike counsel as exceptionable.

(3) *The Facts Justified Binding Instructions on the Matters as to which the Trial Judge Expressed his Opinion.*

In support of their contention, thus raised for the first time in the writ of error,—that the supplemental instruction amounted to a binding instruction for the plaintiffs, it was of course incumbent on counsel for plaintiffs in error to point to testimony which clearly substantiated the issues which they contend were thus taken from the jury. If their testimony was not sufficient to raise such issues, there could have been no error in the trial Judge's statement of his opinion on the facts, even without the qualification that the determination of the facts was for the jury, and even if defendants had taken a proper exception.

The conclusions which Judge Elliott told the jury they were overwhelmingly justified in reaching from the evidence were "that it was the policy and therefore the agreement for years of this national organization to prevent mining of non-union coal for the unlawful purposes named in this complaint that it might not come into competition with union mined coal; that there is no question in this Court's mind but that that strike was ordered down there for that purpose to prevent the mining of non-union coal in these plaintiffs' mines; that the strike was called by those who were the instrumentality of the greater organization, the general organizations, the defendants, and their act was its act, and

that they put into motion the force that destroyed this property, and that force was put into motion for the purpose of preventing the mining of that coal, the shipping of that coal, the running of these mines. Why, this Court has not a thought that there would ever have been any trouble there if it had not been for the prevention of the mining of non-union coal."

In the opinion of the Circuit Court of Appeals, after noting a number of conclusions of fact which the Court holds there was substantial evidence to warrant the jury in finding, the Court says:—

> "**It is established beyond question** that the property of the plaintiffs was burned and their mines destroyed in the course of the strike, for the purpose of carrying out the aims, objects and purposes of the national organization, and its objects were thereby attained to the extent of the elimination of the non-union mines of these plaintiffs by the destruction of their property, and thereby kept non-union coal, produced and intended to be produced from these mines, out of interstate commerce."

The majority of the Circuit Court of Appeals, after reading the Record, apparently agree with Judge Elliott that there was no substantial conflict in the testimony on the questions of fact on which Judge Elliott thus expressed his opinion.

Counsel for plaintiffs in error in discussing this question, point out the errors of fact which they contend Judge Elliott made in his charge, as follows (Brief of plaintiffs-in-error, pages 154–155):—

> "The strike was not called by the International Association."

Judge Elliott did not say that it was, but that it "was called by those who were the instrumentality of the greater organization."

"As to all the mines but the Coronado Mines, there was no strike at all, but a lock-out. There was no riot at the Coronado Mines where alone there was a strike; the property destroyed at that mine was destroyed days later under circumstances where the responsibility is not at all well defined. The International Association did not authorize the strike and did not sanction it."

These, then, are the issues of fact which counsel contend were presented by the evidence and on which they claim that Judge Elliott gave peremptory instructions to the jury.

Judge Elliott gave no supplemental instructions whatever on the question of damages. There is therefore no question at all but that the jury were entirely free to disregard the damages at Coronado if they did not believe that it was the result of the conspiracy.

As to the alleged issue of fact that this was a lock-out and not a strike, this is a reappearance of the red herring which, throughout the entire trial, counsel who tried the case for defendants were continually trying to draw across their trail.

It was entirely immaterial whether the affair at Prairie Creek was a strike or a lock-out. In neither case did the Union have any right to destroy our property and murder our employees.

The very fact that the Union insisted so strenuously throughout the trial that this question was a relevant one in this case gives a significant insight into their psychology.

The officers and members of this organization have shown beyond dispute that in spite of hypocritical protestations to the contrary in their appeals to the public, they have no real regard whatever for the constituted authorities or for the law of the land.

They firmly believed that if they could show that their members were locked out of the Bache operations, if they could raise an industrial grievance against these

companies, they had shown a complete justification for all that they did,—intimidation, assault, lies, arson, murder.

There was no substantial testimony that the strike at Prairie Creek was a lockout and not a strike, only the bare conclusion to that effect by certain of the Union officers and members, for the most part is response to direct suggestions by Mr. Covington.

The complaint alleged that it was a strike in unmistakable terms.

There are three possible conditions in dealing with the Union.

A closed shop where only Union men may be employed.

An open shop where all are employed, be they Union men or Non-Union.

A **lock-out** operation where **no** Union men will be employed.

There is not a word in the complaint or in the testimony to the effect that the operation at Prairie Creek after March 28th was of the latter class.

Mr. Bache testified in answer to questions by Mr. Covington (Rec., 2330–2331):—

"Q. Do you mean to say that the miners came out on strike at No. 4?

"A. That is what I call it and I take their phraseology.

* * * * * * *

"Q. What did they strike for?

"A. Because we were working men not members of the Union.

"Q. Didn't you allege in your original complaint filed in this case that you decided to go on the open shop basis and closed down as a Union shop on the 28th of March, 1914, and you closed down No. 4?

"A. That is the time we stopped work with the Union and started open shop.

"Q. Yes, but now you say you had a strike. If you had no strike, you closed your mine down just as you said in that complaint?

"A. No, we stopped mining on one basis and started the other. **We told all the men down there we would be glad to have them come to work and to stay at work."**

This testimony was uncontradicted, and yet only a very few of the Union men returned to work on April 4th, some of whom were expelled from the Union on that account (2465, 2399) and one of whom, Sylsberry, was murdered by them probably for that reason (1202, 1663).

When Mr. Bache referred to "their own phraseology" he doubtless had in mind the many references in the official reports of the Union officers to the "Prairie Creek Strike" (1462, 1928, 2391, 2396, 2436, 2468, 2470, 2648; see also 1637, 2661).

The second issue which the plaintiffs in error suggest is that "the International Association did not authorize the strike and did not sanction it."

Whether or not the National Association was responsible for the acts of the District officers and members was really a question of law under the undisputed evidence, which the trial Court answered correctly.

There was no substantial evidence offered by defendants to contradict the reiterated statements in their own Official Journal and in the reports of their conventions and Executive Board meetings, not to speak of the declarations of the participants, that plaintiffs' property and business had been destroyed by those who were the representatives of the United Mine Workers in order to carry out its aims, objects and purposes, and that the Union approved of what they had done.

In his principal charge, to which no exceptions were taken except as regards the liability of the National Association for acts of the Branches, the only question that the trial Judge left to the jury was whether the mines had been destroyed with the intent of restraining interstate commerce or because of the alleged outrages committed by the Company men.

There was no question but what all had been done by Union men in the name of the Union. The only question was with what intent it had been done.

The uncontradicted testimony showed, however, that the Union had deliberately burned up several loaded cars of coal standing on the tracks and already billed to points in other states.

In such case it was immaterial with what intent the cars were burned, since the necessary, inevitable and immediate result was a direct interference with interstate commerce, which result the parties must be conclusively charged with having intended.

U. S. *vs.* Reading Co., 226 U. S. 324;
U. S. *vs.* Patten, 226 U. S. 525.

There was really but one issue submitted to the jury,—restraint of commerce *vs* spontaneous uprising of the community.

Counsel for plaintiffs in error have not referred to any testimony which would have sustained such a verdict on this issue and we may properly assume that the only issues of fact which they regard as sustained by the evidence are those referred to on pages 154-155 of their brief.

The evidence offered in support of defendants' contention that the battle of July 17th was not the result of an effort to prevent the shipment of non-union coal, but was a spontaneous uprising of a community indignant by the outrages of the Company employees would not have supported a verdict.

Except for the incident as to Nick Birkell and as to the alleged proposals to the little girls, hereafter discussed, **there was in defendants' testimony no evidence whatever that any company employee had ever laid a hand on a private citizen or shot at or threatened or even definitely insulted any one.**

Not one arrest was made during the entire three months and a half, by the local police officers, on which the assiduous Prosecuting Attorney secured a conviction.

Not one of the many witnesses as to the Frogtown scare knew who had fired the shots or could say from personal knowledged that Frogtown had not been shot up by Slankard and Cluck, as the latter later admitted to Goacher, and as Slankard, who was in Court, was not called to deny.

The defendants in error did not have the means to employ enough guards to overrun the community or to cause the slightest practical danger in Frogtown, much less in Hartford or Huntingdon.

They would not have done so if they could. They could not if they would.

All they and their employees wanted was to be let alone and to be allowed, in peace, to ship their coal in interstate commerce.

The United Mine Workers Journal itself admitted, in an article published as late as November 19th, 1914, that "investigation has not yet disclosed" whether or not it was the Company men who shot up Frogtown (Rec., 2403).

Not one company employee was identified as having ever created the slightest disturbance either in Frogtown or in any of the neighboring towns.

Not one member of the United Mine Workers, and not one representative of the "farmers, bankers, lawyers and ministers" (1420) **whom defendants' counsel contended had made up the "inflamed populace" which destroyed the property, was called to the stand to testify that he was incited by the outrages of the company guards and not by the importunities of the officers of the Union.**

Why did they not call some of them to tell why they did it? Their own witnesses admitted that many hundred persons took part in the attack.

When such participants testified in the contempt proceedings (Stewart U. S. 236 Fed. 838), they did not rely upon the present excuse for destroying the property, but merely denied one after the other, that they knew anything about it.

Birkell testified that about a week before the battle he had been arrested by two company employees at night on the highway when going home to his mother from a visit to his sweetheart, and was turned over by them to the United States Marshal who kept him for the night and the next day took him to Fort Smith.

He did not claim, however, that he had been in any way mistreated by the United States Marshals or by the guards, who had taken him into custody near the electric light pole, where, as the uncontradicted testimony of plaintiffs showed, the supply wires had been recently cut a number of times.

Was this arrest, which Birkell had never brought to the attention of the willing and assiduous local peace officers, a possible cause of a popular uprising to destroy the mines? Could such an uprising possibly have resulted from the fact that on one or two occasions the employees were seen visiting a "booze-joint" conducted in the center of the Union stronghold Frogtown, or that two women of shady reputation were seen going into the "bull pen?"

Finally, the plaintiffs in error relied on the testimony of the six little girls, as disclosing a condition so intolerable as to lead not only the immediate neighborhood but the citizenship of the entire surrounding community to come together and destroy the mines.

If, as they did not, the jury had by a verdict for defendants found that the latter was the fact, would this Court have upheld the verdict? We feel sure that it would not, since the evidence was not sufficient to sustain it.

The six little girls were the sister of Charlie Johnson (2584, 2589) the two sisters of Ves Howard (2578, 2592), the daughter of John Mastell (the Union Quartermaster-general), the sister of John Manick (2613) and one other who alone did not seem to have any identified law-breaking male relatives (2584). In April 1914, the oldest of these little girls (Jessie Howard Thompson) was thirteen (2594). Four of them were either eleven or twelve (2589, 2578, 2612, 2583) and the sixth was not quite eleven (2608)

They swore that on certain occasions men whom they believed to be employees of the Company had made indecent proposals to them.

The dates of these occurrences were fixed by the witnesses at various times, **but not one within three months prior to July 17th.**

The first said that it was in March or April, certainly before their school closed on April 17th (2578–2584).

The second testified to the same incident as occurring "about the last of March, between March and April," before school was out and school was out the 17th of April" (2584).

The third also swore to an incident which took place while she was on the way to school, which she remembered had closed on April 17th (2586).

The fourth described an incident while she was attending school (2592) but fixed the time in the following October or November when school reconvened in the fall (2595).

The fifth identified the time as between April 1st and April 17th when the school closed (2609).

Finally Mary Manick swore to an improper proposal to her when she was going to school (2610), and also swore that "some time in April," "before April 17th," when school closed (2613), Mr. Denman had come riding along on a red horse and took from his pocket and threw at her five or six rocks, "some of them as big as your fist" (2610–2614).

The admitted fact being that Mr. Denman was in Philadelphia from December, 1913, to June, 1914, counsel for defendants ingeniously attempted to escape from the boomerang which this exposition of their testimony would obviously bring back to them, with the following result (2614):—

"Re direct examination.

"By MR. GRANT:

"Q. Miss Manick, when talking about Mr. Denman awhile ago, did you have reference to this Mr. Denman sitting there (indicating), or did you mean boys working over there at the property.

"A. Some boys.

"MR. MCDONOUGH:—That is leading.

"THE COURT:—Yes, that is leading. The Denman boys would not be riding a horse. The Court does not wish to be trifled with.

"MR. GRANT:—That is all.

"(Witness excused.)"

The testimony of these little girls as to the cause of a popular outburst resulting in the destruction of the mines on July 17th, is not merely grossly improbable; **it is absolutely impossible.**

In the first place their story is incredible on its face.

There were admittedly no company employees at the mines from April 6th to April 15th. After the Riot none of them dared to go back until after the temporary injunction had been granted. It was only on April 15th, that John Shaleen ventured back with a gang of men to pump out the mines.

Before April 6th the Company ran non-union but two days, April 4th and April 6th.

April 4th was Saturday and April 5th Sunday, both school holidays.

On April 4th, 5th and 6th, the "guards" were very busy in camp, and the little girls' brothers and fathers were on the spot.

After April 15th the "guards" were still in the Hospital at Fort Smith until subsequent to the closing of school on April 17th.

The little girls were but children, eleven and twelve years old.

They did not report the occurrences to their families.

They all had fathers and brothers who were not merely ready, but eager, to find an excuse to attack the "scabs" and to have them arrested.

There were close at hand officers of the peace who were heart and soul in sympathy with the Union and who made use of every slightest pretext to issue warrants for the arrest of the guards and employees.

The entire community was under the complete control of the United Mine Workers. The votes of the United Mine Workers had elected all the officers then in power

and would elect all those to come. The President of District 21 was daily and hourly with the Prosecuting Attorney. The slightest disturbances in the Company's property were promptly investigated by them.

An accidental shot at the mines brought both Stewart and Prosecutor Little down post haste in the hope of securing some plausible ground for prosecuting the employees (1522, 1523).

All kinds of flimsy charges were invented by Union men in order to give trouble to the Company and to prevent new employees from coming.

If the Company men had made such proposals to these children, it is absolutely inconceivable that they would not have been promptly taken into custody by Slankard, Philpot, Little, the two Hulseys, Fitzgerald, Davis, or some other of the local Union officers of the peace.

Furthermore, it is entirely impossible that these occurrences, happening as they did in every case prior to April 17th, could have been the cause of the attack three whole months later.

Not a thing happened in the meantime which could have provoked the attack, except only the fact that **the mines were operating Non-Union, and on July 17th had commenced to ship coal.**

All defendants' testimony as to the Frogtown and Hartford scares showed as clear as day that the families of the miners were all moved away so as to be out of the battle zone. Every witness called by the other side as to the Frogtown shooting and exodus proved our case.

Under the foregoing facts, without a single word of testimony offered by defendants from the hundreds of available participants that he had ever heard of or been moved to violence by a single unlawful act by a single company employe, would this Court hold that a "reasonable man" could reach an "honest conclusion" that the moving force of the attack was not the United Mine Workers but was something which was suggested and testified to solely by the guess or assertion of counsel for defendants?

If the jury, moved by the eloquence of counsel for

defendants, or by sympathy for the workingman, or by prejudice against corporations or what not, had rendered a verdict for defendants, would this Court sustain it?

If not, it would have been proper for the trial Court to give binding instructions for plaintiffs, leaving to them only the question of damages, and no error can be predicated on any part of his instructions.

> Grimes Dry Goods Co. *vs.* Malcolm, 58 Fed. 670;
> Bank *vs.* Western Union Co., 141 Fed. 522.

Out of the mouths of the officers, representatives, and members of the United Mine Workers, and from the pages of its Official Organ, we have shown that the Union intentionally caused the destruction of our property.

Was it proper to allow the jury to hazard a mere wild guess,—inference on inference on inference—, that this might possibly have resulted from some other cause, **in the absence of the testimony of a single participant that such cause had anything whatever to do with it?**

> Haskell *vs.* Columbus Trust Co., 207 Fed. 322.
> Atchison etc. Ry. *vs.* De Sedillo, 219 Fed. 686.
> Ewert *vs.* Beck, 235 Fed. 513.
> Patton *vs.* U. S., 179 U. S. 658. .

We submit, therefore, that if the jury had found a verdict for defendants, this must have been set aside as not sustained by the testimony.

The majority of the Circuit Court of Appeals holds that the evidence established the conspiracy "practically beyond question."

In view of this there could be no prejudicial error in what the Court said to the jury, even if he had not clearly instructed them, as he did, that they were not bound by his opinion.

Even on the question of damages, which was left to the jury, there was no conflict of evidence except as between plaintiffs' own witnesses as to the value of the property destroyed.

The verdict was less than one-third of the lowest amount fixed by any witness.

SEVENTH.—**There was no Error in the Joinder of Parties or Causes of Action.**

(1) *The Alleged Error was not Substantial.*

Section 269 of the Judicial Code as amended by the Act of February 26th, 1919 (Comp. St. Ann, Supp. 1919, page 1246), provides as follows:—

> "On the hearing of any appeal, *certiorari*, writ of error, or motion for a new trial, in any case, civil or criminal, the Court shall give judgment after an examination of the entire record before the Court, **without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties."**

In his dissenting opinion on the question of Judge Elliott's supplemental charge, Judge Hook relies on this provision as relieving the record of the necessity of a proper exception and as applicable to cases tried and argued in the Appellate Court before its passage.

Counsel for plaintiffs in error also rely on it as applicable to the present proceedings.

As we have seen, however, the purpose and effect of this provision is not to do away with the necessity of a proper exception.

What the Act directs the Appellate Court to disregard is the presence of an unsubstantial exception and not the absence of a substantial one.

We may assume with Judge Hook and with the plaintiffs in error that this Act applies to the present proceedings, but we differ from them as to the point in this case to which it applies.

While it in no way modifies the rule requiring a timely and specific exception to the Judge's charge, it is directly applicable to the question of misjoinder, which is exactly the kind of a question which it was obviously intended to cover.

Counsel for plaintiffs in error in their endeavor to explain the Arkansas decisions which sanction the practice followed in the case at bar, take particular pains on page

173 of their brief to distinguish them from the Federal decisions on the ground that the Arkansas Code contained a provision requiring the Appellate Court to disregard harmless errors, while the Federal Statutes, under which Federal decisions arose, contained no such statute.

As we shall presently show, the provision in the Arkansas Code referred to was not merely one covering appellate procedure, but specifically covered procedure in the trial Court to which the Conformity Act applied. The passage, however, by Congress, of a harmless error statute at least as broad as that in the Arkansas Code cuts from under plaintiffs in error the whole basis for their attempted distinction.

Plaintiffs in error have wholly failed to point out a single substantial right of theirs which was adversely affected by the joinder of what they contend were separate causes of action, or by the rendering of a lump verdict.

While the foregoing would seem to be sufficient to dispose conclusively of this question, the joinder and verdict were properly sustained by the trial Judge and by the Circuit Court of Appeals without regard to the Act of February 26, 1919.

As pointed out by the Circuit Court of Appeals, defendants did not claim but one peremptory challenge, and the payment of this judgment will be a bar to all the nine alleged causes of action.

(2) *The Question of Misjoinder was not Properly Raised.*

The only specification of error which now raises the question of misjoinder is the third (Brief of plaintiffs in error p. 71) as follows:—

> "The Circuit Court of Appeals erred in sustaining the District Court in overruling the separate motions of the plaintiffs in error **to strike from the third amended complaint the name of each of the plaintiffs and their causes of action,** said motion being

made on the ground that the said plaintiffs had not a community of interest in the relief sought and that therefore there was a misjoinder of parties plaintiff and causes of action."

We confidently assert that plaintiffs in error have never really and honestly desired to have the causes of action separated, since this would have entailed a great deal of unnecessary labor and expense on them as well as on us, with absolutely no corresponding advantage to either. This is clearly shown, we submit, by the procedure which they have followed in connection with the alleged error in joinder.

Under the Arkansas practice misjoinder cannot be raised by demurrer, but can be raised only by a motion to strike out the cause of action or party improperly joined with others, or, where the causes of action are of equal status, by a motion to require plaintiff to elect as between them.

Jett *vs.* Maxfield Co. 80 Ark. 167.
Weigel *vs.* McClosky 113 Ark. 1.

The case at bar was obviously one in which the proper procedure was a motion to require an election.

Instead of employing this proper procedure, the plaintiffs merely took steps which they hoped might result in a judgment for them,—demurrers, a single motion *in solido* to strike out the names of all nine companies as well as those of the two receivers, leaving no plaintiffs at all, and a motion for judgment *non obstante veredicto*.

The only error specified is in denying the motion *in solido* to strike out all the plaintiffs and all the causes of action, leaving no plaintiff and no cause of action at all.

The distinction between a motion to strike out one invalid cause of action improperly joined with another, and a motion to strike out all of nine good causes of action, is obvious.

Kirby's Digest provides (Sec. 6081):—

"The Court, at any time before the defense shall, on motion of the defendant, strike out of the complaint, **any** cause or causes of action **improperly joined with others.**"

This did not authorize a motion *in solido* to strike out **all** the plaintiffs, but merely a motion to strike out causes improperly joined, leaving the "others" to be prosecuted by the plaintiffs remaining.

That the question was not properly raised by the demurrers is apparently admitted by plaintiffs in error.

Clearly it was not properly raised by a motion for a non-suit or for judgment *non obstante veredicto*, neither of which were designed to correct the alleged error any more that was their demurrer.

Copper River Ry *vs.* Henry, 211 Fed. 459, 462.

Certainly it was not properly raised by a single motion to strike out the names of all the nine companies and of the two receivers as well, leaving no plaintiffs at all in the case.

Gaillard *vs.* Cantini, 76 Fed. 699, 702 (2nd par. of syllabus);
Quarry Co. *vs.* Construction Co., 151 N. C. 345.

In any possible view of the question, plaintiffs were entitled to have at least one company left as a plaintiff.

The trial Court, even if it had concluded, in the exercise of its discretion, that the causes of action should have been separated or the plaintiffs required to elect, would have been entirely right in denying the motion, since the Court was not bound to split up the motion.

It is a principle of appellate jurisprudence too familiar to require citation that where a single exception is taken to a ruling which involves a number of different propositions, the exception is invalid if the Court was right on any one.

U. S. *vs.* Hough, 103. U. S. 71;
Insurance Co. *vs.* Smith, 124 U. S. 405, 424;
Bogk *vs.* Gassert, 149 U. S. 17, 26;
Texas & Pac. R. Co. *vs.* Humble, 181 U. S. 57;
Sweeney *vs.* Irving, 228 U. S. 233.
See also Turner *vs.* Talbot, 30 Ark. 312;
Cairo Railroad *vs.* Parks, 32 Ark. 131.

Neither the law nor good pleading will permit defendants, in a case where a good cause of action has been stated, to make one solid motion to strike out all the plaintiffs.

This contention on our part is not one merely based on a technicality. There could be no better illustration of the advantage of the insistence on orderly procedure than this.

Plaintiffs in error have deliberately avoided the proper procedure to secure what they obviously did not want,—the separation of the actions—while at the same time manoeuvering to gain a technical advantage and thus defeat our claim, to which they had no just defense.

(3) *There was no Misjoinder.*

Aside, however, from any question of whether the alleged error is substantial or whether the question was properly raised in the Court below, the procedure was entirely proper.

The opinion of the Circuit Court of Appeals was written by Judge Trieber of the Eastern District of Arkansas.

The Court, familiar with local practice, has fully sustained the rulings of the trial judge relative to misjoinder and the rendering of the single verdict.

On the first question, the Court said:—

> "That under the Code of Practice of the State of Arkansas, in which state the wrongs were committed and this cause tried, it was proper to join all the plaintiff's causes of action, all of them arising

out of the same torts, committed by the same persons at the same time, and in pursuance of the same alleged conspiracy, has been determined by the Supreme Court of the State ever since the enactment of the Act of May 11, 1905. St. Louis, I. M. & S. Ry. Co. *vs.* Broomfield, 83 Ark. 288; Southern Anthracite Coal Co. *vs.* Bowen, 93 Ark. 140; Hargis *vs.* Lawrence, 135 Ark. 323, 204 S. W. 755." (The last decision is erroneously cited by the Court from 136 Ark.)

Plaintiffs in error apparently concede that if this were a suit in the Arkansas Courts, their contention with regard to misjoinder would be without foundation. They apparently rely solely on the position that the Conformity Act does not apply to this case and that in a question involving the proper joinder of plaintiffs and causes of action, a Federal Court, sitting in Arkansas, is not bound by, and may not follow the State Practice. The present Arkansas procedure relative to joinder has developed during the past thirteen years.

Prior to 1905 the strict rule requiring separate causes of action to be raised by separate suits was enforced in Arkansas, but in 1905 there was incorporated into the Arkansas Code the Act of May 11th, 1905, page 798, which provides as follows:—

> "When causes of action **of a like nature or relative to the same question** are pending before any of the Circuit or Chancery Courts of this State, the Court **may make such orders and rules concerning the proceedings therein** as may be conformable to the usages of Courts for avoiding unnecessary costs or delay in the administration of justice and **may consolidate** said causes when it appears reasonable to do so."

Under the Arkansas Act of 1905 above quoted, the Courts of Arkansas have held, not merely that the

Court may consolidate two like causes of action, but that when plaintiffs have joined in the same suit a number of different causes of action which might have been consolidated had they been brought separately, the trial Court may approve such joinder by refusing to sustain a motion to strike out or to elect, the Court holding that since the cases could have been consolidated if separate actions had been brought, no error affecting the substantial rights of the parties was committed by allowing the suits to go on as joined.

The Act, it will be noted, does not merely authorize a consolidation by the trial Judge, **but also gives him power to make orders and rules concerning the proceedings to avoid costs and delay, etc.**

One of the first cases which came before the Supreme Court of Arkansas involving the construction of this Act of 1905 was St. Louis, etc., R. Co. *vs.* Broomfield, 83 Ark. 288. Here five laborers, members of a section crew, who had all been discharged at the same time, had each brought suit for statutory penalties for failure to pay their wages for more than a week after their discharge. Their cases were consolidated by the trial Court and the case is reported under one caption. The Supreme Court upheld the consolidation.

This was a simple case of consolidating a number of distinct causes of action growing out of the same transaction after separate suits had been brought on each of them. The next case, however, carried the practice beyond the simple matter of consolidation, and established the principle that causes of action which might be consolidated may be brought originally as one suit.

Mahoney *vs.* Roberts, 86 Ark. 130, was a single action against three defendants on what appeared to be two different causes of action, the one against one defendant for breach of contract, and the other against the other two defendants for a tort, both causes of action, however, arising out of the same transaction.

Kirby's Arkansas Digest contains the following provisions:—

"SEC. 6130. In construing a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties."

"SEC. 6148. The Court **must, in every stage of an action,** disregard any error or defect in the proceedings **which does not affect the substantial rights** of the adverse party; * * * "

The Supreme Court of Arkansas held, on the authority of St. Louis, etc., R. Co. *vs.* Broomfield, 83 Ark. 288 above cited, that if separate actions had been brought, the Court could have compelled the causes to be tried as one action, and that therefore the plaintiff might properly adopt this course in the first instance; to refuse to separate the actions, which could then be consolidated, did not affect the substantial rights of the party objecting.

This case established the practice in Arkansas of joining in the same suit a number of distinct causes of action which arose out of the same transaction and which involved the same contentions to establish or disprove them. The practive has been followed in that State ever since and has been consistently approved by the Supreme Court of Arkansas.

Telegraph Co. *vs.* Shofner, 87 Ark. 303;
Ashford *vs.* Richardson, 88 Ark. 124;
Insurance Co. *vs.* Haynie, 91 Ark. 43;
Tillar *vs.* Reynolds, 96 Ark. 358;
Kansas City So. Ry *vs.* Mixon, 107 Ark. 48, 57;
Weigel *vs.* McCloskey, 113 Ark. 1.
Hargis *vs.* Lawrence, 135 Ark. 323.

In Southern Anthracite Coal Co. *vs.* Bowen, 93 Ark. 140, the Court had consolidated, under objection by defendant, two suits by two workmen who had been injured by the same accident. The Supreme Court approved of this action. Under the Arkansas practice, therefore, these suits might and for that matter should have been joined in the first instance.

In Midland Valley R. Co. *vs.* Ennis, 109 Ark. 206, the Court went so far as to hold that a claim by an injured employee under the Federal Employers Liability Act might be joined in the same suit with one for damages from the same accident under the State law, so that the plaintiff might recover on whichever cause of action he could prove, but one recovery, of course, being permitted.

The most recent considerable discussion of the effect of the Arkansas Act of 1905, by the Supreme Court of that State is found in Fidelity, etc., Ins. Co. *et. al.*, *vs.* Friedman, *et. al.*, 117 Ark. 71.

This was an action by an insured and by a mortgagee against eight insurance companies on eight different fire insurance policies. Eight different suits had been brought which, over objection by defendants, were consolidated and tried together.

Defendants contended that they were each entitled to three peremptory challenges, but the trial Court ruled that they were entitled to but three challenges between them.

The Supreme Court of Arkansas sustained the latter contention, refusing to follow the rule in Mutual Ins. Co. *vs.* Hillmon, 145 U. S. 285. The Arkansas Court said that if the contention of the defendant should be sustained one of the principal objects of the statute would be defeated, as there would be an unnecessary consumption of time in choosing the jury. Judge Hart continued as follows:—

> "It may be true that in some cases for special reasons some of the defendants might want to challenge certain jurors which the other defendants might want retained, and *vice versa;* but such matters as these would be properly urged as reasons why the cases should not be consolidated, or as **reasons why the Court abused its discretion in consolidating the cases.**
>
> "We are of opinion that the Act of May 11, 1905, contemplates that, when actions are consolidated

under it, **they shall proceed to trial as one action,** and that the procedure shall be governed by the rules applicable to one action. It follows that, if the case is to be treated as one action, the plaintiffs and defendants are only entitled to three peremptory challenges each under Section 4536 of Kirby's Digest."

We do not of course contend that if the question in the case at bar involved a "substantial right" given by a Federal Statute, the right to challenge jurors, this Court would follow the Arkansas decision.

The case is cited solely for the proposition that under the Arkansas practice, as prescribed by the Supreme Court of that State, a consolidated case **proceeds to trial as one action and that the procedure is thereafter governed by the rules applicable to one action.**

This decision clearly extended the scope of the Act and modified certain early dicta by the Court as to the effect of consolidation. It disposes conclusively, as far as the Arkansas practice is concerned, of any technical objection to the present practice based on a difference of procedure between a consolidation of different suits separately brought, and the joining of all the claims in one suit in the beginning.

The late Arkansas decisions follow the principle above laid down.

Thus in Williamson *vs.* O'Dwyer Co., 127 Ark. 530, a single verdict was sustained on two causes of action joined as one under the Arkansas practice.

The development of the practice as above outlined consisted of three steps: first, the passage of the Act of 1905, which changed the common law practice theretofore prevailing and permitted the trial Court, in its discretion, to consolidate a number of causes of action of a like nature or relative to the same question.

St. Louis, etc., Ry. *vs.* Broomfield, 83 Ark. 288.

So far, the practice would clearly have permitted the

trial Court to consolidate actions brought by the several companies of which plaintiffs were Receivers.

Next, the Arkansas Court applied to the Act of 1905 the provisions of Section 6148 of the Code, prescribing that "the Court **must, in every stage of an action** disregard any error or defect in the proceedings which does not affect the substantial rights of the adverse party," and held that where plaintiffs to "avoid unnecessary costs or delay" joined in one action several suits which the trial Court in its discretion might have consolidated, it was proper to disregard the short cut thus achieved, and allow the action to proceed, unless the "adverse party" could point out to the Trial Court some "substantial rights" which would be affected by such procedure, and which would lead the Court to exercise its discretion to require the separation of the actions.

Mahoney *vs.* Roberts, 86 Ark. 130.

Under this extension of the procedure, the bringing of but one suit in the case at bar was clearly the proper practice, as it has resulted in the saving of the enormous amount of costs, labor, and expense, which would necessarily have been incident to preparing nine sets of papers and serving nine different times the numerous individuals and associations named as defendants.

Kirby's Digest contains the following provisions:—

> "SEC. 6084. When any plaintiff shall bring in the same Court several suits against the same defendant or defendants, for causes of action that may be joined, the plaintiff shall recover only the costs of one action; and the costs of the other actions shall be adjudged against him unless sufficient reason appear to the Court for bringing several actions."

The trial Judge might, in his discretion, have consolidated nine suits of this kind had they been brought separately. His discretion, under the practice in that State also extends to approving, as he has done here, the

joinder of the claims in one action, thus avoiding very considerable amount of "unnecessary costs or delay in the administration of justice."

In the saving of costs, attorney's fees and time, the joinder was a benefit to plaintiffs in error.

Woollacott *vs.* Meekin, 151 Cal. 701.

The trial Judge was bound under Section 6148 of Kirby's Digest, above quoted, **in every stage of the action,** to disregard any technical objection by the other side that nine suits should have been brought, with nine sets of costs, and then consolidated.

The Arkansas Code provides (Kirby §6005):—

> "All persons having an interest in the subject matter and in obtaining the relief demanded may be joined as parties plaintiff, except where it is otherwise provided."

Certainly each of these nine companies had an interest in the subject matter of the action (see *infra*, pp. 297–302).

See Toomey *vs.* Knobloch, 8 Cal. App. 587.

Still, however, at this second stage in the development of the procedure, it might have been urged that, although the joinder was proper, the Court was still bound to require the jury to bring in separate verdicts.

Passing, for the moment, the fact that defendants failed to raise the latter question at the proper time (which as we shall presently show, is a conclusive answer to the single verdict), the third step, taken in Fidelity Ins. Co. *vs.* Friedman, 117 Ark. 71, still further extended the rule so as to allow the consolidated causes to **"proceed to trial as one action,"** in which **"the procedure shall be governed by the rules applicable to one action."**

Under this procedure, it was, of course, the duty of the trial Court to protect the substantial rights of the defendants, and if, before he submitted the case to the

jury, they had called his attention to any substantial rights which might be adversely affected by a single verdict, he might in his discretion have required separate verdicts.

They did not do so, however, but permitted him, without objection or criticism, to submit to the jury three blank forms of verdict, one for a single verdict for defendants, one for a single verdict against all the defendants, and the third for a single verdict against part of the defendants.

Certainly no abuse of discretion can be predicated on the Court's doing something to which the plaintiffs in error offered no objection, criticism or suggestion, although, as we shall presently show, **such criticism was at the time specifically invited by Judge Elliot.**

Plaintiffs-in-error contend that the Sherman Act itself requires separate suits and quote from the debates in Congress to show that this was intended.

Obviously the Sherman Act was in no way intended to prescribe a procedure to supersede that provided by State practice, but merely gave a right of action to "any person," which included associations as well as corporations, but left the procedure, by which the person might sue, to the local practice.

The amendment proposed by Senator George was to cover only cases of injuries committed by the same defendant against each of several plaintiffs "separately."

One of the items of damage specified by the Sherman Act was the "business" of the injured party, which, particularly when used with the word "property," was obviously intended to cover good-will (see authorities hereafter cited).

The good-will of all these companies was owned jointly by them and not severally, and it was only by a joint action that they could properly recover for its destruction.

Plaintiffs in error further urge that, even though the practice in Arkansas be as we contend, a different practice has been established in the Federal Courts, and that, in

spite of the Conformity Act, the Federal Court is bound to follow the procedure developed in the Federal decisions.

The Arkansas Act of 1905 was copied, it is said, practically word for word, from Section 921 of the Revised Statutes, which the United States Supreme Court had construed differently from the construction placed by the Arkansas Court on the Act of 1905.

There are three answers to this position.

In the first place, as we have heretofore pointed out, the passage of the Act of Congress of February 26, 1919, removes any dissimilarity which could formerly be claimed as existing between the Arkansas and Federal practice.

Second, the statutory procedure in Arkansas in cases of joinder, which, under the Conformity Act, the Federal Courts are bound to follow, is not found solely in the words of the Arkansas Act of 1905. It consists of the Arkansas Statutes, **as construed by the highest Court of that State.**

This Court has held that where it has construed a State Statute in a certain way, on a subject where State Law governed the Federal Courts, and later the highest Court of the State construes it in a different way, in a still later proceeding in the Federal Courts the latter must follow, not their own construction of the State Act, but that of the State Court.

Green *vs.* Neal's Lessee, 6 Pet. 291;
Leffingwell *vs.* Warren, 2 Black 599;
Fairfield *vs.* Gallatin County, 100 U. S. 47.
See also Ward *vs.* American Co., 232 Fed. 119.

Third, the Arkansas procedure in cases of joinder is not contained solely in the Act of 1905, but in that Act **taken together with other provisions of the Arkansas Code, no counterpart of which is found in the Federal Statutes.**

The Arkansas procedure was developed by the Arkansas Court, not merely by an interpretation of the Act of

1905 standing by itself, but in connection with Section 6148 and the other Sections of the Code above quoted, which present an entirely different situation.

The Conformity Act, Section 914 of the Revised Statutes (17 Stat. 197), is as follows:—

> **"The practice, pleadings and forms and modes of proceeding in civil causes,** other than equity and admiralty causes, in the Circuit and District Courts, shall conform, as near as may be, to the practice, pleadings and forms and modes of proceeding existing **at the time** in like causes in the Courts of record of the States within which such Circuit or District Courts are held, any rule of Court to the contrary notwithstanding."

In O'Connell *vs.* Reed, 56 Fed. 531, 535, Judge Sanborn thus stated the purpose of this provision:—

> "The purpose of this Act was to conform the pleading, practice and modes of procedure in the Federal Courts, in actions at law, to those proceedings in the State Courts, under the Codes of the various States in which they were established, **so that lawyers who were practicing in both the State and Federal Courts would be relieved of the burden of studying two systems of pleading and practice."**

When the case of Mutual Ins. Co. *vs.* Hillmon was tried in the Kansas District, this Court had already held in Sawin *vs.* Kenny, 93 U. S. 289, that the Federal Courts were bound to follow the procedure provided by a State Code relative to the joinder of parties.

At that time, however, the Kansas Code did not apparently contain any provision permitting the joinder of causes of action merely because they were causes of a like nature relative to the same question.

Section 921 of the Revised Statutes, however, **permitted** the Federal Court, in its discretion, to consolidate actions.

This Court in the Hillmon Case merely held that Section 921, as construed by it, did not authorize the trial Court to go as far as it there went in treating the consolidated cause as one action, and that, under the above provision, no defendant could be deprived, without his consent, of any right material to its defense, particularly where the right claimed was one specifically given by another Federal law.

Section 819 of the Revised Statutes specifically provided for three peremptory challenges for each party, and it was accordingly held that the joinder over defendant's protest could not deprive the several defendants of that right, expressly given by the Federal statute.

There was apparently no Kansas Statute **"existing at the time"** which authorized the procedure and Section 921 of the Revised Statutes, as construed by the Court, did not go so far as to authorize it. In fact Section 819 prohibited it.

There is, however, **"existing at the time"** an Arkansas Statute which does authorize the procedure here followed. No Federal Statute purports to prevent it.

As pointed out by the Circuit Court of Appeals, defendants in the present case challenged only one juror peremptorily, the record failing to show that defendants made any claim to additional challenges.

There is nothing, moreover, in Section 921 which purports perpetually to limit the trial Court to the powers therein given or to prohibit it from availing itself of such **further** power or discretion in connection with cases of joinder as might subsequently be given by later State Statutes.

When the Act of 1905, as construed by the Arkansas Supreme Court in connection with Sections 6148, 6130, and 6084 of the Code, extended the power and discretion of the trial Court in joinder cases in the State Courts, **the Conformity Act operated to add such additional powers to those already given the Federal Trial Judges under Section 921.**

There is no question of a conflict between State and

Federal Procedure Statutes,—**merely a case of an addition.**

An entirely different question is presented in cases like O'Connell *vs.* Reed, 56 Fed. 536, or Holt *vs.* Bergevin, 60 Fed. 1, where the question is one **not of Federal Procedure but of Federal Jurisdiction.**

No State statute, however specific, could enable a plaintiff, who had a cause of action wherein the matter involved was less than that required to get into the United States Court, to acquire Federal jurisdiction merely by virtue of such State law.

The distinction is between cases involving a conflict of State Procedure and Federal Jurisdiction, and those involving merely a supplement of Federal Procedure by State Procedure.

There is a further obvious distinction also in cases like Union Pac. R. Co. *vs.* Jones, 49 Fed. 343 where the **plaintiffs** object to having their separate recoveries intermingled. It is one thing for **plaintiffs** to raise a timely objection to this but quite another thing for **defendant** to attempt to raise the question after the verdict has been rendered. The first case may involve the invasion of a substantial right, while the second does not.

The case at bar is analogous to the cases arising under the Employers' Liability Act.

There this Court held that there need be no apportionment of the damages because the law provided a method for this.

In the case at bar, as in those cases, the law—the Court administering the Receivership—will take care of the distributing the fund recovered, and plaintiffs in error need give themselves no concern whatever about it.

The practical distinction between the objection to a single verdict by the defendant or by one of the plaintiffs is also illustrated by two of these Federal Employers' Liability cases.

In Gulf etc. R. Co. *vs.* McGinniss, 228 U. S. 173, an

apportioned verdict rendered with plaintiff's approval was apparently sanctioned by this Court, although in the following cases, where there was no apportionment, it held that defendant could not object to this, in spite of the fact that the single verdict would not enable the defendant, on appeal, to show that one plaintiff had got more than he was entitled to under the law and another less.

Central R. Co. *vs.* White, 238 U. S. 507;
Ches. & Ohio R. Co. *vs.* Kelly, 241 U. S. 485.

In Kansas City Southern Ry. Co. *vs.* Leslie, 238 U. S. 599, 603, this Court sustained a lump verdict under the Employers' Liability Act in a suit joining two separate and distinct causes of action, the one for the benefit of the estate of the deceased, and the other for the next of kin, on the ground that this was sanctioned by the local practice in Arkansas, where the suit arose.

That the Conformity Act is applicable to this case requires no authority to demonstrate.

In Rush *vs.* Newman, 58 Fed. 158 (C. C. A. 8th Cir.), the fourth paragraph of the syllabus is as follows:—

> "In actions at law in the Federal Courts **the sufficiency of the pleadings to support the judgment** must be determined by the laws regulating the practice and pleadings in the State Courts, as determined by the State decisions."

In Sawin *vs.* Kenny, 93 U. S. 289, this Court held that it was bound by the provisions of the Arkansas Code regulating the joinder of parties.

In Bond *vs.* Dustin, 112 U. S. 604, it was held that the Federal Courts were bound under Section 914 to follow a statute of Illinois providing that where a verdict was rendered on several counts it might not be set aside if any of the counts were good.

In Glenn *vs.* Sumner, 132 U. S. 152, 156, Mr. Justice Gray said:—

" The sufficiency and scope of the pleadings, and the form and effect of verdicts, in actions at law, are matters in which the Circuit Courts of the United States are governed by the practice of the Courts of the State in which they are held."

See also:—
Albany Co. *vs.* Lundberg, 121 U. S. 451, 454;
Arkansas Co. *vs.* Belden Co., 127 U. S. 379, 387.

In Bryson *vs.* Gallo, 180 Fed. 70, the Circuit Court of Appeals for the Sixth Circuit held itself bound to follow the provisions of the Ohio Code almost precisely similar to those Sections 6130 and 6148 of the Code or Arkansas, requiring a "liberal construction" of the pleadings, "with a view to substantial justice between the parties," and providing that the trial Court "must, **at every stage of an action,** disregard any error or defect in the proceedings which does not affect the substantial rights of the adverse party."

Section 6148 is not a provision relating merely to appellate procedure. It applies to **" every stage of the action "** and required the trial Judge to overrule the demurrer based on misjoinder. It further required him, when the case came to trial, to overrule the single motion by defendants to strike out all the plaintiffs. not only because such a motion was manifestly not the proper way to raise the question, but also since defendants called to his attention no substantial rights on their part, thereby adversely affected, which would properly influence him, in his discretion, to take such action.

Finally these provisions required him during the trial to treat the case as one action and to submit the case for a single verdict, **unless defendants could again show some substantial reason why their rights would be prejudiced thereby.**

This they did not even attempt to do. On the contrary they in effect gave their unqualified approval to submission of the case to the jury **to find but a single verdict.**

What happened is shown by the Record at the close of the Judge's charge to the jury (Rec., 3219):—

"When you have agreed upon your verdict, if for the defendant, you will simply sign the verdict that the jury find the issues in this case in favor of the defendant, and against the plaintiffs; find all of the issues in this case in favor of the defendants and signed by your foreman.

"If for the plaintiffs, you would sign the verdict that the jury find all of the issues in this case against the defendants and in favor of the plaintiffs, and assess the actual damages of the plaintiffs at the sum of—there you would write in the number of dollars. The verdict will be blank. You would insert the number of dollars, and the foreman would sign that. Another form will be given you, because the Court has instructed you that you must consider at least in determining who are parties to the conspiracy and therefore determining who the defendants are that are liable, if any of them are, and who are not liable, if any of them are not, therefore a verdict will be furnished you with a space that the jury finds for the defendants, or find against the plaintiffs and in favor of the defendants, with a space in which the defendants names can be written, and that will be signed by the foreman, and would entitle such defdndants whose names were returned in there by you to a dismissal of the action, and just below that, 'We find the issues in this action against the defendants,' naming them, 'and in favor of the plaintiffs, and assess plaintiffs damages at the sum of dollars.' **So there will be three forms of verdict submitted to you.** In the one you have to write nothing except the name of a foreman on a verdict for the defendants. **In the other, the general verdict for the plaintiffs, in which you would simply insert the amounts, if your verdict is in favor of all the plaintiffs and against all of the defendants,** and in the third it will be necessary to insert the names of the de-

fendants in whose favor you determine the issues, and the names of the defendants against whom you determine the issues, together with the amount of the verdict signed by you.

"I think that covers it, gentlemen?"

The Court's final remark, above quoted, was obviously addressed to counsel.

If counsel for defendant thought that the protection of their "substantial rights" required separate verdicts, this was obviously the time for them to say so.

They said nothing on the subject.

Counsel for plaintiff suggested a correction or addition to the charge relative to the measure of damages with which the Court at once complied (Rec., 3220; these additional instructions were given immediately after the defendants took their exceptions and should have followed at the top of page 3221).

Counsel for defendants took two exceptions, **both involving solely the liability of the National Union, and neither in any way alluding to the form of the verdict** (see *supra*, page 246, hereof).

If, as the Courts have frequently held, counsel may not wait to object to the answer of a witness until such answer proves unfavorable, how much less standing did they have to wait to object to this verdict, until the verdict proved unfavorable to them, when they knew full well from the judge's charge that, if for the plaintiffs, it could not be other than in a lump sum.

Judge Adams' comment in St. Louis etc. Ry. Co. *vs.* Duke, 192 Fed. 306, 309, is directly applicable here:

> "This practice of permitting a question to be answered without objection, and, if perchance the answer be unfavorable, to then object to both question and answer, **is not proper or fair practice. It permits a party to speculate on the chances of a favorable answer before committing himself against the question."**

To sustain the position of plaintiffs in error would permit them to speculate on the chance of a favorable verdict before committing themselves against what they knew must be its form.

We have elsewhere cited rather fully the decisions of this Court requiring timely requests for instructions to the trial Court and specific exceptions to portions of the charge objected to (see pp. 252–260 hereof). We will not here burden the Court with a reiteration of these citations.

In this connection it is interesting to note the recent Arkansas case of St. Louis etc. Ry. *vs.* Rodgers, 118 Ark. 263, 268 where the Court held that, irrespective of the question of "substantial prejudice," a defendant who had failed to request separate verdicts prior to the submission of the case to the jury was not in a position to ask the Court to require the jury to apportion the verdict after it had been rendered.

That the trial Court in no way abused its discretion in connection with the matters above discussed, further appears from a consideration of the peculiar facts of this case.

The petition alleged that the properties of the several companies of which the plaintiffs were appointed Receiver were all closely interrelated and depended one on the other. The Court in which the trial was held and which had as a matter of fact ordered the suit to be brought, had appointed plaintiff's predecessor Receiver of all these companies **by a single decree.**

Referring to the interrelations of the companies and their properties, Mr. Bache testified (2325):—

> "A. The lines of these properties did not concern us in putting in our mines because we put our mines down regardless of the lines between the leases and the properties we owned. **We held them as one concern and it was all under lease, one property with the other, and the mines went through the lines whether we held them in fee or one company by another company or under lease."**

In conducting the Receivership, the same Court, as its Record shows, had treated the properties **as a unit.**

To provide funds for the conduct of the receivership the Court had authorized and there had been issued Receiver's Certificates to the amount of $35,000 which were made a first lien **on all the property of all the companies indiscriminately.**

The companies were treated by all concerned, Court, receivers, stockholders and creditors, as one concern.

Furthermore, the conspiracy by defendants was directed, not against the property of each of these companies separately or against all properties of all people indiscriminately, **but was directed against these particular interests AS A UNIT.**

It is further contended by plaintiffs-in-error that certain of these companies had no legal interest in the suit.

As we shall presently show, they all owned jointly the good will and business of the group and for this reason alone were justified in bringing a joint suit for its destruction.

It is apparently conceded that the Prairie Creek Coal Mining Company, the Mammoth Vein Coal Company, the Mammoth Vein Coal Mining Company and the Coronado Coal Company owned physical property which was destroyed.

Specific damage to physical property suffered by each of the other five companies was as follows:

The Denman Coal Company owned a great part of the machinery, both in the Coronado Mine (2135, 2137) and at the Rock Island tipple at Mammoth Vein No 1 (2248, 2249, 2251), which mine and tipple were destroyed by the Union in the course of or immediately after the battle.

While the leases of this machinery by the Denman Coal Company to the Mammoth Vein Coal Company contained provisions requiring the lessees to make good the losses, the lessees were left in no position to do so. The lessor, Denman Coal Company, therefore lost its machinery.

The Hartford Coal Company owned the Dallas Mine,

which was damaged to the extent of $2950, as testified by Mr. Denman (Rec., 1973–1976). Its business was also seriously injured by the forfeiture of the adjoining lease in conjunction with which it had been planned to operate the Hartford Company's land (1978).

The Sebastian County Coal Company was lessee of the Boone lease, which was one of the leases forfeited. It had subleased the coal at 5 cents a ton additional royalty to the Coronado Coal Company (2105–2123), and lost this lease.

The Mammoth Vein Royalty Company also owned a tract adjoining one of the forfeited leases, which itself was leased to the Mammoth Vein Coal Company, and which the forfeiture of the lease rendered incapable of profitable operation. It also had an agreement with the Mammoth Vein Coal Company and the Mammoth Vein Coal Mining Company by which it was to receive 2 cents per ton on all the coal hauled through its property from the tracts covered by the forfeited leases. The acts of plaintiffs in error rendered this agreement of no value whatever and caused its total loss to the Mammoth Vein Royalty Company.

The Bache-Denman Coal Company was the parent company of the syndicate. It had made an agreement, secured by a bond, with the Rock Island Railroad to ship a certain amount of coal annually over that road, which by reason of the destruction of the Rock Island Tipple, it was unable to fulfil. The railroad had made claim under the bond and agreement for several thousand dollars (2310–2311).

While the bond itself was not admitted in connection with this damage, the agreement was subsequently admitted for another purpose (2490) and the damage to the Bache-Denman Company is thus apparent. The bond should properly have been admitted as evidence of direct damage to the Bache-Denman Company, and it having been rejected on the objection of plaintiffs in error, they are in no position to rely on the absence of proof contained in it.

Missouri K. & T. Ry. Co. *vs.* Elliott *et al.*, 102 Fed. 96, 103–104.

The mere fact that the Bache-Denman Coal Company had thus obligated itself, relying solely on its subsidiaries to fulfil its obligation, is a good illustration of the interrelation of these operations, and of our position that they were all a unit.

The contention by plaintiffs in error that these particular companies had totally independent claims, which they could have prosecuted separately, totally overlooks not only the facts relative to their organization but the nature of the right given under the Sherman Act.

As we have heretofore pointed out, the Sherman Act specifically allows a recovery not merely for tangible property destroyed. "Any person who shall be injured in his **business** or property * * * may sue, etc."

The use of the word "business" in addition to "property" makes conclusive what would otherwise be clear, that the remedy was intended to cover injuries to good will as well as to physical property.

Cleveland, etc., R. Co. *vs.* Barchus, 154 U. S. 439;
San Diego Co. *vs.* National City, 174 U. S. 739;
San Diego *vs.* Jasper, 189 U. S. 439;
Knoxville *vs.* Water Co., 212 U. S. 1.

It has been specifically held that good will is properly an element of damage under the Sherman Act. Such constituted the major portion of the damages sustained in Loewe & Lawlor, 235 U. S. 522.

It is not at all necessary to support this judgment to hold either that a stockholder may bring suit to collect damages suffered by his company or even that parties having independent interests injured by the same conspiracy may bring a joint suit or consolidate their actions.

The business, the good will, of all these nine companies was owned and enjoyed by them jointly and was attacked by the United Mine Workers as a joint operation.

It would have done no good for the United Mine Workers to blow up and destroy the mines of one of these companies without destroying all of them. The

conspiracy was directed against the property of the companies jointly, and the statement of claim so avers.

No attempt was ever made to operate the Coronado open shop. The Union struck and subsequently destroyed the Coronado **simply and solely because Bache owned it as well as the Prairie Creek and Mammoth Vein.**

The Mammoth Vein Mines Nos. 1 and 6, and the Dallas Mine, were not being operated open shop when they were destroyed by defendants. **They were destroyed solely because they were a part of the joint business against which the unlawful conspiracy was directed.**

In reading the extracts from the Journal it is noticeable that the operations are always referred to as conducted by the Bache-Denman Coal Company (*supra*, pp. 111, 112, 119, 120, 133) the parent or holding company, and no attention at all was paid to which company happened to hold legal title to which particular mine.

They had leases, agreements and arrangements between one another which would have made it totally impossible to determine exactly which company suffered exactly what proportion of the total loss (see, for instance, Rec., 2218, 2139, 2135, 2263, 2203, 2219).

The water supply for the Prairie Creek Coal Mining Company, Mammoth Vein Coal Company and Mammoth Vein Coal Mining Company was all furnished by the Prairie Creek Company.

In what proportion did the destruction of this water supply affect the three companies?

What part, for instance, of the business and good will of the group in Kansas City or in Duluth belonged to the Prairie Creek Coal Mining Company and what part to Coronado?

The coal from all the mines was distributed among all the companies as occasion required. The good will of all really belonged to the owners of the property, to the group of operations.

Here is the reason for the belated attempt by the Union to compel the jury to split up the verdict. Not

that any honest and substantial right of theirs was affected by the consolidation or by the single verdict, but simply in the hope that, by reason of the infinite complication which would necessarily result, the jury of honest farmers would become so hopelessly confused that the defendants, who had no substantial defense to the case, and against whom the verdict had already been rendered when they first asked for its apportionment, would get off scot-free.

It was to prevent just this sort of injustice, which so frequently happened in Lord Coke's day, that the Arkansas Code, "with a view to substantial justice between the parties," gave to the trial Judge discretion, where a number of causes of action were of a like nature or relative to the same question, to allow them to be consolidated either before or after the suit was brought and to "proceed to trial as one action" (117 Ark. 71).

Certainly each of the nine companies, entirely apart from any physical damage to its property, was entitled to at least nominal damages on account of the destruction of the **business** of the syndicate of which it was a part and in whose good will it directly participated.

The obvious way to treat the whole matter, with a view to substantial justice between the parties, both plaintiffs and defendants, was to treat the whole as one action.

By paying this judgment the defendants will get a full release from all the nine companies.

See Kansas City So. Ry. *vs.* Mixon, 107 Ark. 48, 57.

The only right they have lost is the right to perpetuate an injustice by delaying the trial and confusing the issue.

The distribution of the amount recovered will be for the Court which appointed the receivers of all nine by a single decree. So far none of the nine, nor any of their stockholders,—two or three in number,—or their creditors, have offered any objection and it does not lie in the mouth of these plaintiffs in error to do so.

EIGHTH.—**There was no Error in Requiring the Representatives of the Association to Produce the Books and Papers called for.**

The sole ground on which plaintiffs in error seek to distinguish this case from Hale *vs.* Henckel, 201 U. S. 43 is that this defendant is not a corporation.

That this distinction is without a difference is so clearly brought out in the opinion of this Court in Wilson *vs.* U. S., 221 U. S. 361, that elaboration by us is unnecessary.

The distinction is not between corporate books and other books, but between papers which the party holds in his own right and those which he holds merely as custodian subject to the demand of the real owner.

See also Wheeler *vs.* U. S., 226 U. S. 478.

Grant *vs.* U. S., 227 U. S. 74.

Johnson *vs.* U. S. 228 U., S. 457.

The papers ordered to be produced were solely those belonging to the Association and the order was directed to the officers solely in their representative capacities, as custodians thereof.

The Sherman Act is not, as plaintiffs in error contend, a penal statute.

Atlanta *vs.* Foundry Co., 127 Fed. 27, 28 (affirmed 203 U. S. 390).

Other Errors Assigned but not Argued.

We assume that the alleged errors suggested by the assignment of errors but not covered by the points presented to this Court have been abandoned by plaintiffs in error.

NINTH.—**The Judgment Should be Affirmed.**

It is respectfully submitted that the judgment of the Circuit Court of Appeals was correct and should be affirmed.

HENRY S. DRINKER, JR.,
JAMES B. McDONOUGH,
For Defendants in Error.

ROGER B. HULL,
Of Counsel.

APPENDIX A.

Extracts from Conference Committee Reports and Debates in Congress on the Labor Provisions of the Clayton Act.

Section 6 of the Clayton Act provides as follows:—

> "SECTION 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying on the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

Extract from Report No. 627 of the Conference Committee appointed by the Senate and House to Report a Conference Draft of the Clayton Act, the portions of the two Reports with reference to Section 6 being identical.

"VII.

"FRATERNAL, LABOR, AND OTHER ORGANIZATIONS.

"The object of Section 7 (subsequently changed to Section 9) is to make clear certain questions about which doubt has arisen as to whether or not fraternal, labor, consumers, agricultural, or horticultural organizations, orders, or associations organized for mutual help not having capital stock or conducted for profit, come within the scope and purview of the Sherman antitrust law in such way

as to warrant the courts under interpretations heretofore given to that law to enter a decree for the dissolution of such organizations, orders, or associations upon a proper showing, as may be done in regard to industrial corporations and combinations which have been found to be guilty of violation of its provisions.

* * * * * *

"It was contended before your committee by Mr. Gompers, president of the American Federation of Labor, that under the interpretations of the Sherman Law as construed by the courts, the labor organizations as they exist today, might, under certain conditions, be deemed and held illegal combinations in restraint of trade and be dissolved by a decree of the court under section 4 of the act of July 2, 1890, and that the American Federation of Labor and all organizations affiliated with it exist and operate today at the sufferance of the administration in power. Mr. Gompers, among other things in his address before the committee, said:

"'Gentlemen, under the interpretation placed upon the Sherman anti-trust law by the Courts, it is within the province and within the power of any administration at any time to begin proceedings to dissolve any organization of labor in the United States and to take charge of and receive whatever funds any worker or organization may have wanted to contribute or felt that it is his duty to contribute to the organization.

"'MR. WEBB:—Are there any suits pending in the Courts now looking to this end, Mr. Gompers?

"'MR. GOMPERS:—There are no suits now pending, but an organization of workingmen, the window-glass workers, was dissolved by order of the Court under the provisions of the Sherman anti-trust law, charged with conspiracy as an illegal

combination in restraint of trade. And while that organization was dissolved by action of the Court, yet it created no furor, for this reasoning: I have no desire to reflect upon the men who are in charge of that organization as its officers and representatives, but it was, in my judgment, supine cowardness for them not to resist an attempt of the dissolution of their associated effort as a voluntary organization of men to protect the only thing they possessed—the power to labor.

"'MR. WEBB:—Have you any case where a labor organization has been dissolved simply because they themselves united in asking or fixing a certain wage and went no further in uniting with the manufacturers?

"'MR. GOMPERS:—I can not tell you, sir, about that. But that is the very essence of the life of the organization. What I want to convey is this, that there are probably, of these 30,000 or more local associations of workingmen, what we call local unions of working men and working women, probably more than two-thirds of whom have agreements with employers. As a matter of fact, I think that every observer and every humanitarian who knows greeted with the greatest satisfaction the creation of the protocol in the sweated industries of New York City and vicinity which abolished sweat-shops and long hours of labor, and the burdensome, miserable toil prevailing, and established the combination of employers and of workmen and workwomen by which certain standards are to be enforced, and no employer can become a member of the manufacturers' association in that trade unless he is willing to undersign an agreement by which the conditions prevailing in the protocol will be inaugurated by him. Yet, under the provisions of the Sherman anti-trust law that association of the manufacturers has been sued, I think, for something like $250,000, because it is a conspiracy in restraint of trade.

"'What I mean to say is this: I am perfectly satisfied in my own mind that the Attorney General of this administration, the Attorney General of the United States under the present administration, is not going to dissolve or make any attempt to dissolve the organizations of the working people of this country. **I firmly believe that if there should be any of them, any individual or an aggregation of individuals, guilty of any crime, that the present administration would proceed against them just as readily, and perhaps more so, as any other;** I am speaking of the procedure **against the organizations themselves** and the dissolution of them. But who can tell whether this administration is going to continue very long, or whether the same policy is going to be pursued; that is, the policy of permitting these associations to exist without interference or attempts to isolate them? Who can tell? What may come; what may not the future hold in store for us working people who are engaged in an effort for the protection of men and women who toil to make life better worth living? We do not want to exist as a matter of sufferance, subject to the whims or to the chances or to the vindictiveness of any administration or of an administration officer. Our existence is justified not only by our history, but our existence is legally the best concept of what constitutes law. It is an outrage; it is an outrage of not only the conscience; it is not only an outrage upon justice; it is an outrage upon our language to attempt to place in the same category a combination of men engaged in the speculation and the control of the products of labor and the products of the soil on the one hand and the associations of men and women who own nothing but themselves and undertake to control nothing but themselves and their power to work.

"'MR. FLOYD:—I want to see if I understand your position. If I understand your position under

the existing status of the law as determined by the Federal courts, if the Attorney General should proceed to dissolve any of your labor organizations they could be dissolved. Is that your proposition?

"'MR. GOMPERS:—Yes, sir.

"'MR. FLOYD:—And that your existence, therefore, depends upon the sufferance of the administration which happens to be in power for the time being?

"'MR. GOMPERS:—Yes, sir.

"'MR. FLOYD:—**What you desire is for us to give you a legal status under the law?**

"'MR. GOMPERS:—**Yes, sir.**

"'MR. FLOYD:—So you can carry on this cooperative work on behalf of the laborers of the country and of the different organizations without being under the ban of the existing law?

"'MR. GOMPERS:—Yes, sir.'

"In the light of previous decisions of the courts and in view of a possible interpretation of the law which would empower the courts to order the dissolution of such organizations and associations, your committee feels that all doubt should be removed as to the legality of the existence and operations of these organizations and associations, and that the law should not be construed in such a way as to authorize their dissolution by the courts under the antitrust laws or to forbid the individual members of such associations from carrying out the legitimate and lawful objects of their associations. This will be accomplished by the provisions of section 7 of this bill, **which recognize as legal the existence** and operations of fraternal, labor, consumers, agricultural, or horticultural organizations, orders, or associations organized for purposes of mutual help, and not having capital stock or conducted for profit, and forbids the danger and possibility of the dissolution of such organizations, orders, or associations by a decree of the courts as unlawful com-

binations in restraint of trade or commerce under the provisions of the antitrust laws. It also guarantees to individual members of such organizations, orders, or associations, the right to pursue without molestation or legal restraint the legitimate objects of such association. This section should be construed in connection with sections 15 to 22, inclusive, which regulate the issuance of injunctions and provide for jury trials in certain cases of contempts in Federal Courts. The sections relating to injunctions and contempts constitute for labor a complete bill of rights in equitable proceedings in the United States courts."

For years Mr. Gompers and his colleagues had been reiterating, until both they and their constituents had probably come to believe it, that the courts were discriminating against the laboring class, holding them criminally and civilly responsible for doing things which would not have been held unlawful if done by other than laboring men in the absence of a labor dispute, and that in view of such attitude, lawful and peaceful labor unions exercising merely their proper functions in a lawful manner were in danger of dissolution merely because their purpose was to raise wages and better working conditions, which would indirectly result in increasing prices.

Accordingly, the following planks were inserted in the Democratic Platforms of 1908 and 1912, in pursuance of which the labor provisions of the Clayton Act were passed:—

"Questions of judicial practice have arisen especially in connection with industrial disputes. We believe that the parties to all judicial proceedings should be treated with rigid impartiality and that injunctions should not issue in any cases in which injunctions would not issue if no industrial dispute were involved.

* * * * * * *

"The expanding organization of industry makes it essential that there be no abridgement of the right of wage earners and producers to organize for the protection of wages and the improvement of labor conditions, to the end that such labor organizations shall not be regarded as illegal combinations in restraint of trade."

In redeeming this pledge the Democratic Congress which passed the Clayton Act had no thought of licensing labor unions unreasonably to restrain interstate commerce, or to destroy property with impunity but merely to allay the fears and silence the statements of those who contended that their class was discriminated against by the courts and to declare that the mere existence of a labor union lawfully exercising its legitimate functions does not amount to an **unreasonable** restraint of interstate commerce.

As stated in the reports of the judiciary committees of the Senate and the House submitting the bill as amended:—

"It is not proposed by the bill or amendments to alter, amend or change in any respect the original Sherman Anti-Trust Act of July 1, 1890. The purpose is only to supplement that Act and the other Anti-Trust Acts referred to in Section 1 of the bill."

"The bill does not interfere with the Sherman Anti-Trust Act at all; it leaves the law of conspiracy untouched and is not open to criticism on any constitutional ground."

There was no intention of doing what the Labor Unions had for years been striving to have done—to provide that the Anti-Trust Act shall not **apply to** Labor Unions. Amendments so providing were expressly rejected by Congress.

"MR. THOMAS:—Mr. Chairman, I ask to have that amendment read for information.

"THE CHAIRMAN:—If there be no objection, the amendment will be again reported.

The Clerk read as follows:

Strike out the first paragraph of Section 7 as amended and insert in lieu thereof the following:

"The provisions of the anti-trust laws shall not apply to agricultural, labor, consumers, fraternal, or horticultural organizations, orders or associations.'

"The question being taken, the Chairman announced that the noes appeared to have it.

"MR. THOMAS:—Let us have a division.

The committee divided; and there were—ayes 70, noes 79.

"MR. THOMAS:—Mr. Chairman, I ask for tellers.

"Tellers were ordered, and the Chairman appointed Mr. Thomas and Mr. Webb.

"The committee again divided; and the tellers reported ayes 69, noes 105.

"Accordingly, the amendment was rejected."

Vol. 51, Cong. Rec. part 10, page 9569.

Speaking on behalf of the amendment thus defeated, Mr. Thomas of Kentucky, who offered it, said:—

"MR. THOMAS:—Mr. Chairman, to say the least of this amendment it is as ambiguous as the prophecy of a Roman oracle. As a matter of fact, it means nothing. It is a mere declaration of that which is now the law. To make the statement that this law shall not be construed so to hold certain organizations to be illegal is simply to state that these organizations *per se* shall not be declared to be illegal by this law. You might insert a paragraph declaring that under this law the Baptist Church or the Masonic order should not be construed to be an illegal combination in restraint of trade. They are not illegal, even in the absence of that declaration. Agricultural organizations and Labor organizations under this law are not illegal combinations, even without that declara-

tion, and notwithstanding that declaration the very moment that an agricultural association or a laborers' organization violates any provision of this law it is applicable to such association and they can and will be punished under the law. Any man knows that. For instance, should these associations have in their by-laws or charter articles which allowed them to form conspiracies, to form monopolies in restraint of trade, does any man contend that the very moment they attempted to carry out such declaration of the organization they would not fall under this law? To be sure they would. If you are going to exempt these organizations, exempt them. If you are not going to exempt them, say so. The amendment which I shall offer after this amendment has been voted on simply declares that the provisions of the anti-trust laws shall not apply to any of these organizations. There you have a clean cut exemption. (id. p. 9544).

The purpose and effect of the Clayton Act, as applied to Labor Unions is made clear by the following discussion in Congress by Mr. Webb, in charge of the Bill in the House, and by other members of the House and Senate.

"MR. WEBB:—Mr. Chairman. The Amendment which is under consideration is, in the opinion of the Committee, in keeping with the declaration of the Democratic platform, to the effect that labor organizations and farmer's organizations organized for mutual self help shall not be considered or construed to be illegal combinations or conspiracies in restraint of trade under the Anti-Trust laws.

* * * * * * *

"Personally, I have never had any idea that the existence and operation of labor organizations, of farmers unions, or fraternal orders were ever intended to come within the provisions of the Anti-Trust law.

However, some labor leaders have contended for many years that labor organizations have their existence as a matter of sufferance and at the whim of the attorney general, and if suit should be brought, if they were not dissolved entirely, much trouble would be given them. * * * Therefore we say that we have embodied in this section as set forth in the first part of Section 7 and expressed in the latter part of this amendment which I now offer what is generally understood to be the law and should be the law of the United States with reference to labor organizations as well as fraternal and farmers' organizations. Applause." (id. p. 9540).

"MR. WEBB:—We wanted to make it plain that no labor organization or farmer's organization organized for mutual help without profit should be construed to be a combination in restraint of trade or a conspiracy under the anti-trust laws. Now I will say frankly to my friend that **we never intended to make any organization, regardless of what they might do, exempt in every respect from the law.** I would not vote for any amendment that does do that. Applause.

"MR. MURDOCK:—**If the labor organization goes beyond the province of mutual help, then it is subject to the Sherman Anti-Trust Law?**

"MR. WEBB:—**If it violates the law, it is, of course. It is an organization subject to the law,** and I ask if my friend from Kansas would vote to exempt it from all laws? (id. p. 9567).

"MR. TOWNER:—**Any association of the classes mentioned, or any member who violates the anti-trust laws will be liable to their penalties the same as any other association or person.** It is merely provided that the organization or legitimate operation of such association shall not be held to be within the prohibitions of the statute." (id. p. 9547).

MR. GRAHAM:—So far as the Webb amendment now proposed is concerned, it seems to me that it

effectuates what the committee proposed in the original section 7, only in broader and clearer language. It provides that a certain class of organizations and their members shall not be held liable as conspiracies in restraint of trade or monopolies under the language of the antitrust law. As I understand it, it does not exempt them if they are guilty of aggressive, malicious, and criminal acts. If these are committed, they are as much liable as any other class or set of citizens, and that is as it should be, for in matters of crime there ought to be no classification of the citizens of our country." (id. p. 9549).

"MR. JONES:—I desire to get the views of the Senator from Kansas as to how far he thinks this provision of the proposed law goes. Does it go any further than recognizing the legality of these organizations as organizations, or does it permit these organizations after they are organized, to then go on and do things in restraint of trade and exempt them from prosecution for such acts?"

"MR. THOMPSON:—I think it exempts them simply as lawful organizations; but, of course, if they do anything unlawful or use any unlawful means, they are subject to prosecution under the antitrust law and under the general laws on the subject without regard to the antitrust law.

"MR. JONES:—That is what I wanted to get at; that is about my idea with reference to how far this provision goes.

"MR. THOMPSON:—The provision only protects such organizations in the performance of lawful acts, as I understand.

"MR. JONES:—It prevents the court from holding as a conspiracy in violation of the Sherman law **simply because of their** organization?" (Vol. 51 part 14 page 13847).

"MR. THOMPSON:—That is the intention, as I understand it." (*id.* p. 13848).

"MR. BORAH:—The only effect of it, in my judgment, will be to remove the possibility of an attack upon the organization as such which in my judgment at this time could not be successfully made. In other words, it removes a fear, possibly well grounded, but in my judgment unfounded, in the law as it now exists. This section gives these organizations a status and permits them to lawfully carry out their legitimate purposes." (id. p. 13918)

"MR. BORAH:—I have no doubt at all of the proposition that the organized engineers, although they might be the only engineers who could run the trains properly, could quit work. They could assign a reason or not assign a reason, just as they pleased. If they went a step further, however, and if the road was prepared to operate and they interfered with its operation through the instrumentalities which the road might choose to employ, incompetent engineers or otherwise, they would be within the provisions of the Sherman law. In one instance—to wit—in quitting work—they are exercising a right; in the other instance, where they interfere with others from operating a train, they are not exercising a right, but doing a wrong, and the consequences which flow from doing a thing we have a right to do and the thing we have not a right to do may be physically the same, but the legal liability is different." (id. p. 13921).

"MR. JONES:—Nor does this proposed section 7 make acts done by some organizations legal which if done by other organizations would be illegal. It does not permit these organizations to commit acts in undue restraint of trade which would be prohibited to other organizations. While some few might argue in favor of such an exemption, there is no considerable number of our citizens, laborers, farmers, or otherwise, who would urge that they be permitted to restrain trade and others be prohibited from doing

it. One of the cardinal principles of farmers' and laborers' organizations is "special privileges to none and equal rights to all." **A law that would allow some persons or organizations to commit certain acts and make it unlawful for other persons and organizations to do the same thing would be more injurious in the long run to the organizations and persons given this special privilege than beneficial, and nothing would sooner undermine the very foundations of our Government than such a course.**

* * * * * * *

"In my judgment this provision does not give to labor a single right that it does not now possess. This provision simply says, in effect, that the existence of labor organizations is not unlawful; that their operations for mutual help are legal; that the lawful efforts of their members to carry out their legitimate objects is not forbidden; and that such organizations are not *per se* in restraint of trade, nor their members as such conspirators in restraint of trade. All this, in my judgment is lawful now. I do not believe that any decision of any court can be found where it has been held that a labor organization, independent and apart from acts done by its members, is simply by virtue of its formation and existence a combination in violation of the Sherman law. No court of last resort has held that laborers, in the absence of contract cannot quit work either singly or in a body, and for any reason whatever, or for no reason, and regardless of the consequences to private or public interests. The right to do so is an inherent right and its exercise is superior to the rights of the individual or the public, and the courts cannot inquire into the consequences of the exercise of such right with a view to preventing it.

* * * * * * *

"This provision gives no more than this—Why pass it? What is its purpose? It is to set at rest in an authoritative way by legislative enactment any doubt that may exist as to those rights of labor or rather to set at rest this one question, to wit, whether a labor organization is *per se* a combination in violation of the Sherman law, and therefore liable to dissolution irrespective of what it or its members may do. Some able lawyers have held that it is so liable to dissolution, and labor thinks they may be right, and this provision sets at rest that doubt. Surely no one who understands this will object to such legislation, and those who have protested against this section will most surely approve its passage when they understand it. In other words, this provision is no more and no less than a legislative declaration of existing law as enunciated by the courts." (id. pp. 14012, 14013.)

"MR. HUGHES:—There is no one here on either side of the Chamber who desires to give the farmers' or laborers' organizations or any other organizations the right to use violence, threats, intimidations, coercion, or force of any kind. I am willing to write that into this section now. It seems to me that we ought not to waste any more time on it." (id. p. 14015.)

"MR. JONES:—I suggested a while ago, especially with reference to labor, that there is a difference of opinion with reference to what a combination or an association of labor is. Some prominent lawyers say the mere fact of the existence of an organization of labor is of itself a violation of the Sherman law. I do not think there is anything to that, and the only purpose of this legislation is to set at rest in a legislative way that particular question. It is a legislative construction that these farmers' organizations may exist without violating the Sherman law; it simply makes certain what some able men have doubted; that is all." (id. p. 14016.)

"MR. JONES:—Those who oppose this legislation and urge us not to pass it must believe that it exempts labor organizations and their members from prosecutions for acts done beyond what they have a legal right to do for the purpose of unreasonably restraining trade or commerce. It does not do this, and such acts can be prosecuted just the same after the passage of this provision as before, either, in my judgment, under the Sherman law or under other laws of a local or a national character affecting these acts. It may be—and this is the point I want to call the attention of the chairman of the committee to—that for such acts an organization could now be dissolved, while after the passage of this provision it might not be; but even if this is so, it could be restrained from doing the unlawful acts, and then there could be no objection to its continuance as an organization. In other words, under the Sherman law an organization that is found guilty of restraining trade can be dissolved; and I take it that if a labor organization should be held now to have restrained trade, the court could dissolve such organization.

"Now I want to ask the Senator from Texas if this section is adopted and then a labor organization should be held to have violated the Sherman law by reason of intimidation or coercion or acts of that character which are beyond the legitimate purposes of the organization and its lawful scope whether this provision would not exempt it from dissolution and whether the courts would not probably restrain those acts and then let the organization continue in existence?

"MR. CULBERSON:—I think, Mr. President, that would depend somewhat upon whether or not the amendment proposed by the committee inserting the word "lawfully" is adopted.

"MR. JONES:—I mean if the amendment is adopted.

"MR. CULBERSON:—It would depend on whether the amendment proposed by the Judiciary Committee inserting the word "lawfully" is adopted. I think in that case, where the organization exists and is pursuing the legitimate objects of the organization in a lawful manner, it could not be dissolved, or rather, declared unlawful or restrained by an injunction of a Federal court.

"MR. JONES:—The point I am suggesting is this: Suppose that they do something unlawful. Suppose they do unlawful acts, then the court could restrain them from doing those acts.

"MR. CULBERSON:—I think so, so far as this bill is concerned.

"MR. JONES:—But would it not have to stop there, or could it go on and dissolve the organization?

"MR. CULBERSON:—Not in my judgment. The court would not be authorized to dissolve the organization.

"MR. JONES:—That is my point, and that is the suggestion that I am making. That, in my judgment, is the only substantial change made by this provision in existing conditions. Under conditions now existing the court could dissolve the organization, while if this provision is passed and a labor organization should commit some unlawful act the court could stop those unlawful acts. There it must stop and let the organization continue its existence. I think that is quite a substantial right and quite a substantial provision, but one that will not in any way interfere with interstate trade or commerce.

"MR. WEST:—Mr. President, in what way would the court stop such an organization—by fine or imprisonment?

"MR. JONES:—I suppose so, or by injunction or something of that sort." (id. p. 14017).

"MR. CUMMINS:—Yes, I think the passage of the

section will remove this danger. It will make it clear that a labor organization—assuming now that the words are construed to mean a union of wage workers having for its object the increase of wages, the betterment of conditions, and the lessening of hours of work—is not in and of itself a restraint of trade. I think that must be accepted as the effect of this section; but the moment you pass beyond that and enter any activity of an officer of the association or a member of the association I think the section does nothing at all. I think the word "lawfully," which has been reported by the committee and, I understand, is now before the Senate for rejection or adoption, limits the activities or acts or doings of any such association to just such as are now authorized by the law." (Id. p. 14018).

"MR. THOMAS:—The effect of this section is to neutralize and render inoperative those decisions of the class to which I have referred, which declare or tend to declare that these organizations are *in themselves* organizations in restraint of trade, and therefore subject to dissolution.

"The fact of existence, their status, in other words, is fixed by this section, and in so far as their objects are legitimate and in the pursuit of them, legitimate measures are used there can be no conflict with the antitrust laws. The same thing may be said of corporations, great and small. But beyond that, Mr. President, this section does not go; the thing itself is legalized. Whether it comes under the provisions of the antitrust laws depends upon its future conduct, which may or may not be offensive to those statutes.

"The union can do nothing, in other words, that the corporation cannot do under this statute, if it proposes to steer clear of the antitrust laws. The corporation can do anything that the labor union may do and keep out of the clutches of the antitrust law. Its purpose, in other words, Mr. President, is

to create an equality of status, and beyond that the general laws of the country are operative."

* * * * * * *

"Therefore with reference to this branch of the subject, I may summarize the situation by the statement that section 7 makes, so far as the anti-trust laws are concerned, all labor and agricultural associations lawful and endows them with power, if they did not have it before, of carrying out in a lawful manner the legitimate purposes and objects of their organization, but they may nevertheless so act as to violate the law just as corporations or individuals may violate it by conduct which brings them within its prohibitions. No combination really becomes a combination in restraint of trade until it does something, until it takes some active step, until its plans are effected or sought to be effected by overt acts. A man may contemplate a crime and the law is powerless to lay its hand upon him until by some act he does or attempts the thing forbidden.

"So it is the act or attempted act, in its last analysis which makes a corporation or any other association of individuals subject to the provisions and inhibitions of the anti-trust law, and it would be a mistake if this bill were enacted into a statute under the mistaken impression that it does something more; otherwise a large class of our fellow citizens might well say that they asked us for bread and received a stone."

* * * * * * *

"Mr. President, if it be true that under the provisions of this bill labor organizations may indulge with impunity in the boycott, then it is equally true that manufacturers may combine with labor organizations in boycotting their competitor's goods, and because of such combinations they will also

become exempt from its operations, for it is an elementary legal proposition permitting of no exception that if the principal is not guilty the accessory cannot be guilty. The result would be that we would have a statute prohibiting corporations from any act in restraint of trade unless those actions were in combination with employees, in which event they would be absolutely exempt from its provisions, and the Sherman Act would cease to be an effective force in interstate commerce. The mere statement of such a proposition is its own refutation." (Id. pp. 14021–3).

APPENDIX B.

TEXT OF THE SHERMAN ANTI-TRUST ACT.

AN ACT to protect trade and commerce against unlawful restraints and monopolies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce along the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such territory and another, or between any such territory or territories and any state or states or the District of Columbia, or with foreign nations, or between the District of Columbia and any state or states or foreign

nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties (1667) complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section 4 of this Act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in Section 1 of this Act, and being in the course of transportation from one state to another, or to a foreign country, shall be forfeited

to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. That the word "person" or "persons" wherever used in this act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, or the laws of any of the territories, the laws of any state, or the laws of any foreign country.

APPENDIX C.

Federal and State Statutes in Effect in 1914, Authorizing the Formation of Unincorporated Labor Unions and Recognizing them as Existing under Such Laws.

Federal Statutes.

Section 6 of the Act of Congress of October 15, 1914 (38 Stat. at large 730, 731, the Clayton Act), is as follows:

> "Nothing contained in the anti-trust laws shall be construed to forbid the **existence** and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."

Another Act of Congress, passed four years before the Sherman Act, contains an equally explicit recognition,—the National Trades Unions Act of June 29, 1886 (24 Stat. at Large, 86), quoted in the body of the Brief.

Chapter 389 of the Acts of 1911–1912 (37 Stats. at Large 550), Section 1, provides for the admission to the mails as second class matter of "periodical publications issued by or under the auspices of ***trades unions.*"

The Act of August 1st, 1914 (38 Stat. at Large, 609, 652), in making the appropriation to the Department of Justice for the enforcement of the Anti-Trust laws provided that "no part of this money shall be spent in the prosecution of *any organization* or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours, or bettering the conditions of labor, or for any act done in furtherance thereof, not in itself unlawful."

State Laws.

Arkansas, Oklahoma and Texas.

The three States over which District Branch No. 21 of the United Mine Workers has jurisdiction and in which this Branch carries on the activities of the National Organization, are Arkansas, Oklahoma and Texas.

The laws of these three States of Arkansas, Oklahoma and Texas clearly recognize unincorporated trade unions as "existing under" the laws thereof.

The Act of May 6th, 1905, Acts page 745, Kirby & Castle Digest, Sec. 5473, etc., of the State of Arkansas is known as the Trades Union Label Act. Section 5475 of this Act is as follows:—

> "Section 5475. Whenever any association or union of workingmen has heretofore adopted or used, or shall hereafter adopt or use a label for the purpose of designating, making known or distinguishing any goods, wares, merchandise or other product of labor, as having been made, manufactured, produced, prepared, packed or put on sale by a member or members of such association or union, it shall be unlawful to counterfeit or imitate such label or to use, sell, offer for sale or in any way utter or circulate any counterfeit or imitation of any such label."

The subsequent sections provide for the fine or imprisonment of any person counterfeiting or imitating such label.

Section 5478 provides as follows:—

> "5478. **Every such association or union** adopting or using a label as aforesaid, **may proceed by suit to enjoin** the unauthorized use, display, and sale of any counterfeit or imitation thereof, and all courts of competent jurisdiction shall grant

injunctions to restrain such manufacture, use, display, or sale, and may award **the complainant** in any such suit for damages resulting from such manufacture, use, sale or display as may be by said court deemed just and reasonable and shall require the defendants to pay to such association or union all profits derived from such wrongful manufacture, use, display or sale; and such court shall also order that all such labels, counterfeits or imitations in the possession or under the control of any defendant in such cause shall be delivered to an officer of the court, or to the complainant, to be destroyed."

We beg to call the Court's attention to the fact that this Act does not specify how the suit to be brought by the trade union is to be entitled.

Presumably the suit is to be brought in the name of the Association, or under the provision of the Arkansas code which we have heretofore quoted in connection with Point Three,—suit being brought by the representative officers on behalf of the association.

The above recognition by the Arkansas Statutes of Labor Unions as existing thereunder, is not in any way dependent on whether the particular union has registered a union label with the Secretary of State of Arkansas. The recognition by the State law does not depend on registry. Without registry the Act makes it illegal for anyone to counterfeit or use without authority a label which has been adopted by a trades union.

Nor does the recognition of the existence of the Union depend even on the adoption of a union label. The **Union must first be existing** under the laws of Arkansas before it adopts or registers a label. **The Act recognizes such present existence.** Whether or not this particular Union has or has not adopted a label or registered it under the Act is immaterial.

By the Act it is given, **as an Association,** a right, benefit and privilege not possessed by it at common law.

The other States over which District No. 21 has jurisdiction are Oklahoma and Texas.

In OKLAHOMA there is a Trade Union Label Act practically identical with that in Arkansas.

Revised Laws, Okl. (1910) Vol. II, Secs. 8211–8219.

Section 3707 of the Revised Laws of 1910, Vol. I, provides as follows:—

> "It shall be the duty of the President or chief executive officer of **every labor organization** of which he is an officer, immediately to communicate the fact (of any strike or lockout) to said Board (the State Board of Arbitration and Conciliation) with such information as he may possess touching the differences or controversy and the number of employees involved."

Section 3763 makes it a misdemeanor to cause or compel any person to enter into an agreement not to join or be a member of any **labor organization** as a condition of securing or continuing employment.

Section 3764 provides that no combination or contract in contemplation or furtherance of a trade dispute shall be punishable as a conspiracy where the act shall not be indictable if done by one person, but specifically provides "that nothing in this article shall be construed to authorize force or violence."

In TEXAS there is a similar express statutory provision giving an unincorporated trade union the right to prevent by suit in Court, the unauthorized use of a trade label adopted by the Union.

Acts 1895, page 108, I Vernon's Sayles' Dig. (1914) Arts. 705–706.

The Texas Statutes further recognize unincorporated labor unions both as existing under and as authorized thereby, in a distinct and very significant chapter in the Statutes of that State, as follows (III. Vernon's Sayles' Dig., page 3438):—

"TITLE 77.

"CHAPTER TWO.

"Labor Organizations.

"Article 5244. **Right to organize.** It shall be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service, in their respective pursuits and employments, (Acts, 1899, page 262, Sec. 1.).

"Article 5245. **Other rights and privileges.** It shall not be held unlawful for any member or members of such trades union or other organization or association, or any other person, to induce or attempt to induce by peaceable and lawful means, any person to accept any particular employment, or quit or relinquish any particular employment in which such person may then be engaged, or to enter any pursuit, or refuse to enter any pursuit, or quit or relinquish any pursuit in which such person may then be engaged; provided, that such member or members shall not have the right to invade or trespass upon the premises of another without the consent of the owner thereof. (Id., Sec. 2.)

"Article 5246. **Not to apply to what organizations.** The foregoing articles shall not be held to apply to any combination or combinations, association or associations of capital, or capital and persons, natural or artificial, formed for the purpose of limiting the production or consumption of labor's products, or for any other purpose in restraint of trade: provided, that nothing herein contained shall be held to interfere with the terms and conditions of private contract with regard to the time of service, or other stipulations, between employers and employees; provided, further, that nothing herein

contained shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies. (Id., Sec. 3.)."

The Texas statutes further provide for the appointment to the State Arbitration Board of two members by the "central body" of **" any labor organization "** to which the aggrieved employees belong, or by the organization itself if it is not represented by delegates to a central body.

The submission to arbitration is to be signed by the **" labor organization** representing the employees," and it is provided that during the pendency of the arbitration it shall not be lawful for the "organization representing the employees" to order strikes or boycotts against such employer.

Acts 1895, page 85, Sections 1, 3 & 8, I. Vernon's Sayles' Dig. Arts. 71, 74 and 78.

By article 425 of the Revised Criminal Statutes of 1911 it is made a misdemeanor without authority to use or wear the badge, label or button or other emblem of **"any labor organization."**

Other States in which the United Mine Workers has Active District Branches.

The other states in which the Record shows that the United Mine Workers has a District Branch and actively carries on its work are Alabama (District No. 20, P. 395), Colorado (District No. 15, p. 371), Illinois (District No. 12, p. 395), Indiana (District No. 11, p. 413), Iowa (District No. 13, p. 379), Kansas (District No. 14, p. 395), Kentucky (District No. 23, pp. 395, 412), Michigan (District No. 24, p. 411–412), Missouri (District No. 25, p. 477), Montana (District No. 27, p. 400), Ohio (District No. 6, p. 389), Pennsylvania (Districts Nos. 1, 2, 5, 7 and 9, p. 412, 384), Virginia p. 541), Washington (District No. 10, p. 399), West Virginia

(District No. 17 and 29, p. 367), and Wyoming (District No. 22, p. 399, 576), and British Columbia (District No. 18, p. 395).

Each of these States has one or more laws recognizing the existence of unincorporated labor unions and giving them a status and rights under its laws.

In ALABAMA, in addition to a Trade Union Label Act similar to that in Arkansas (Code of 1907, vol. III, Sections 7322, 7323), the Act of April 7, 1911 (General Acts, page 320), provides for the submission of grievances between employer and employee to a board of arbitrators, and provides that "when the employees concerned are members, in good standing of a labor organization, one arbitrator may be appointed by such organization and one by the employer." (Section 6).

COLORADO, also has a similar Trade Union Label Act, (Revised Statutes of 1908, Section 6844, 2 Mills Annotated Statutes (1912), page 3188), the Unions having secured the passage of such an Act in 43 of the States.

By Section 3903 of the Revised Statutes of Colorado of 1908 (I Mills Annotated Statutes (1912), page 244), the Bureau of Labor Statistics is required to present biennial reports to the Legislature, covering, *inter alia*:—

> "Thirteenth.—A description of the different kinds of **labor organizations in existence** in the State, and what they accomplish in favor of the class for which they were organized."

Section 3924 (I Mills Annotated Statutes (1912), page 215), specifically permits two or more persons to combine and to advise, by peaceable means, others to combine relative to the compensation, working conditions and welfare of labor as against the employer, provided no force or intimidation be employed.

The Act of March 27th, 1911, Laws, page 8, 2 Mills Annotated Statutes (1912), page 3187, provides that it

shall be a misdemeanor for an employer to demand, as a condition of employment, that the employee shall sever any present connection with, or shall refrain from joining **any lawful organization or society,** or that the employer "under any pretense whatever," "prohibit, limit, or restrain such employee from exercising his social, financial, fraternal or business rights in connection with or through **any lawful organization or society,** during his employment."

In ILLINOIS the Trade Union Label Act is found in the Act of May 8th, 1891, Laws, page 202, as amended by Act June 13th, 1895, Laws, page 319, 6 Jones & Addington's Illinois Stat., Annotated, pages 6331 to 6339.

The Act of August 2nd, 1895, Laws 1895, page 5, as amended by Act of May 15th, 1903, Laws, page 84, 3 Jones & Addington's Illinois Stat. Annotated, page 2856, provides for the appointment by the Governor of three persons to compose a State Board of Arbitration, one of whom "shall be an employee and shall be selected from **some labor organization."**

The Act of April 12th, 1899, Laws, page 75, 3 Jones & Addington's Illinois Stat. Annotated, page 2859, makes it the duty of the "president or chief executive of **every labor organization,** in case of a strike or lockout, actual or threatened, involving the members of the organization of which he is an officer," to communicate the facts to the Board.

In INDIANA (where the principal office of the United Mine Workers is located), in addition to the Trade Union Label Act (3 Burn's Annotated Stat., Rev. of 1908, Sections 10453–10463), Section 2683, I Burn's Annotated Statues, Rev. of 1908, makes it punishable as a misdemeanor for any individual or corporation to prevent or coerce any employee "from forming, joining and belonging to **any lawful labor organization."**

Section 7963, 3 Burn's Annotated Stat., Rev. of 1908, also provides that the arbitration agreement provided for by the previous sections, may be signed on behalf of the employees by the officers or committeemen of **any** "**labor union** or workingmen's society" to which they may belong.

By section 9348 the Bureau of Labor Statistics is instructed to present a biennial report covering, *inter alia*, "**trades unions and other labor organizations,** and their effects on labor and capital."

The Indiana Statues specifically recognize the existence in that State of the United Mine Workers, providing by Section I of Chapter 276 of the Acts of 1911, Acts, page 658, that the coal miners "individually or **through their organizations,**" may recommend a miner for the Examining Board to pass on the qualifications of coal miners.

IOWA, like all the other States in which the United Mine Workers has District Branches, has a Trade Union Label Act, giving an unincorporated Labor Union the right to register its union label and to protect its use by Court proceedings. (Iowa Code of 1897, Sections 5049–5051).

Chapter 292 of the Iowa Acts of 1913, Supplement Code of Iowa 1913, Section 2477n also recognizes the existence of unincorporated labor unions by providing (Section 1) that the "organization" representing employees engaged in a labor dispute may appoint one member of the board of arbitration thereby provided.

In KANSAS, in addition to the Trade Union Label Act (Genl. Stat., 1915, Sections 11654 to 11659), Section 10423 of the General Statutes of 1915, makes it the duty of the Commissioner of Labor to report annually to the Legislature statistical details relating "to **trade unions** and **other labor organizations** and their effect on labor and capital."

In KENTUCKY, the Trade Union Label Act of April 16,

1890, is found in Carroll's Statutes, Sections 4749 to 4755. By section 34 of these Statutes, it is made the duty of the State Commissioner of Labor to put himself in communication with different organizations in the State including **" labor societies."**

MICHIGAN's Trade Union Label Act is found in the Compiled Laws of 1897, Sections 11681 to 11686, as amended by Chap. 279 of the Acts of 1913. (Howell's Statutes, Sec. 7555–7561.)

Sections 7451 to 7456, 7434 to 7440, and 7447 to 7450, of the Compiled Laws of 1897 provide for the incorporation of Labor Unions. Section 7457 provides that "all societies, **unions** and associations of tradesmen or laborers **actually existing** and conducting their affairs under a constitution or articles of association," may incorporate by filing the constitution or articles verified by oath.

Section 11382 provides that the State Anti-Trust Law **"shall not apply** * * * to the services of laborers or artisans who are formed into societies or organizations for the benefit and protection of their members."

MISSOURI has a similar Trade Union Label Act (Rev. Stat. 1909, Sections 11789–11796; acts of 1913, pp. 763–765).

Section 7802 of the Revised Statues of 1909 provides for the appointment by the Governor of a State Board of Mediation and Arbitration consisting of three persons, one of whom "shall be an employee holding membership in some bona fide **trade** or **labor union."**

MONTANA's Trade Union Label Act is contained in Sections 8452 to 8457 of the Penal Code of 1907.

The Revised Code of 1907 of Montana requires that all state printing shall bear a union label (Sections 254–255).

This State also has a provision for a State Board of Arbitration and Conciliation to be appointed by the

Governor, one of the three members of which "must be a laborer, or selected from **some labor organization.**"

In the Montana Act forbidding monopolies and contracts in restraint of trade there is a provision exempting "any arrangement, agreement or combination between laborers made with the object of lessening the number of hours of labor or increasing wages." (Section 8289 of Code of 1907; Chap. 97, Section 2 of Acts of 1909).

The Trade Union Label Act of OHIO is Sections 6219–6227, and Sections 13102, 13103, 13153–13155 of the General Code of 1910, and also page 420 of the Acts of 1911.

Section 12943 of the Code of 1910 provides for the fine or imprisonment of any one coercing or attempting to coerce employees "from forming, joining or belonging to a **lawful labor organization.**"

Section 13163 also provides a fine or imprisonment for any one who "not being entitled so to do under the rules and regulations thereof, wilfully wears the badge or button of * * * a **labor organization,** * * * or uses or wears it to obtain aid or assistance thereby."

The Trade Union Label Act of PENNSYLVANIA is the Act of May 2nd, 1901, P. L. 114.

By the Act of May 8, 1869 P. L. 1260, it is made lawful for "any and all classes of mechanics, journeymen, tradesmen and laborers to form **societies** and **associations** for their mutual aid, benefit and protection and peaceably to meet, discuss and establish all necessary by-laws, rules and regulations to carry out the same."

By the Act of June 16th, 1891, P. L. 300, it is made lawful for any laborers either individually or as the member of any **club, society or organization** to refuse to work for any one who pays insufficient wages or treats his employees badly or where such continued labor is "contrary to the rules, regulations or by-laws of any **club, society or organization** to which he or she or they belong without

subjecting any person or persons so refusing g to work to prosecution or indictment for conspiracy, under the criminal laws of this Commonwealth," provided the constitution, by-laws, rules and regulations conform to the laws of Pennsylvania and

> "Provided that nothing herein contained shall prevent the prosecution and punishment, under existing laws of any person or persons who shall by the use of force, threat or menace of harm to person or property, hinder persons who desire to labor for their employers from so doing, or other persons from being employed as laborers."

By the Act of March 27th, 1903, P. L. 106, it is made a misdemeanor for any one not entitled to use the insignia or button "of any association, society or **trades union**" to wear or use the same to obtain aid or assistance.

In addition to its Trade Union Label Act (Code of 1904, Section 1906d; Code of 1919, Secs. 1455-1463) the laws of VIRGINIA make it a misdemeanor to make unauthorized use of "any insignia or button of any association, society or **trades-union.**"

WASHINGTON'S Trade Union Label Act is found in Sections 9492–9500 of the Codes and Statutes of 1910.

Sections 2676 and 2677 of this Code also make it a misdemeanor to "give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any duly constituted 'representative of a **labor organization**'" or for such a representative to ask or receive the same.

Section 6553 makes it the duty of the Commissioner of Labor to make a biennial report to the Legislature covering statistical details relating, *inter alia*, "to **trade unions** and other **labor organizations** and their effect upon labor and capital."

In addition to the standard Trade Union Label Act (Sec. 3578–3585 of Hoggs Code), Section 4487 of the code

of WEST VIRGINIA makes it unlawful for any one by threats or intimidation to prevent any person from working in or about a mine but provides that "this provision shall not be so construed as to prevent any two or more persons from associating together under the name of Knights of Labor, or any other name they may desire, for any lawful purpose, or for using moral suasion or lawful argument to induce any one not to work in or about any mine."

The WYOMING Trade Union Label Act is found in Sections 3439–3444 of the Compiled Statutes of 1910.

The Constitution of Wyoming itself recognizes the existence of labor unions, requiring the Legislature to establish courts of arbitration to hear and determine all differences and controversies between **organizations and associations of laborers** and their employers.

The answer of defendants alleges that they carry on their activities in CANADA (247, 261). On page 395 of the Record it appears that District Branch No. 18 is located in BRITISH COLUMBIA.

In CANADA there are statutes both of the Dominion, and of the Province of BRITISH COLUMBIA, entitled "Trades Union Act" (Chap. 125 of Rev. Stat. 1906 and Chap. 228 of Rev. Stat. British Columbia 1911.)

Section 2 of the Act first cited is as follows:—

> "In this Act, unless the context otherwise requires, 'trades union' means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, but for this Act, have been deemed to be an unlawful combination by reason of some one or more of its purposes being in restraint of trade."

Section 33 is as follows:—

> "The purposes of any trade union shall not by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise, or so as to render void any agreement or trust." See also §497 of Ch. 146 to the same effect.

Section No. 1 of Chap. 228 of the British Columbia statutes of 1911 provides as follows:—

> 1. "No trade-union nor any combination of workmen or employees in British Columbia, nor the trustees of any such union or combination in their representative capacity, shall be liable in damages for any wrongful act of commission or omission in connection with any strike, lock-out, or trade or labor dispute, unless the members of such union or combination, or its council, committee, or other governing body, acting within the authority or jurisdiction given such council, committee, or other governing body by the rules, regulations, or directions of such union or combination, or the resolutions or directions of its members resident in the locality or a majority thereof, shall have authorized or shall have been a concurring party in such wrongful act."

Additional State Statutes.

The foregoing covers the principal Acts of the 18 States in which the United Mine Workers have active District Branches, recognizing the existence of unincorporated Labor Unions under the several laws and giving rights and protection to such organizations, all of which laws were in effect in 1914 when the plaintiffs' mines were destroyed and when the present action was originally begun.

The following is a list of the principal Statutes of

States in which the United Mine Workers of America had no active branch, giving recognition and protection to unincorporated Labor Unions.

Arizona.—Trade Union Label Act—Penal Code §§314–318.

California.—Trade Union Label Act—Political Code of 1906, §§3200–3201; Penal Code 1906, §§349a–351, (Amended by Ch. 181 Acts of 1911). Coercion against joining or being member of labor organization a misdemeanor. Code of 1906, Section 679.

Unauthorized use of insignia of labor union unlawful—Ch. 331 and 392 of Acts of 1909.

Connecticut.—Trade Union Label Act—Genl. Stat. of 1902, §§4907–4912 (Am. Ch. 151 Acts of 1907).

Coercion against joining or being member of labor union unlawful—§1297, Genl. Stat. 1902.

Protection of insignia of labor union—Ch. 113, Acts of 1907.

Delaware.—Trade Union Label Act—Ch. 266 of 1899.

Florida.—Trade Union Label Act—§§3169–3172, Genl. Statutes of 1906.

Georgia.—Trade Union Label Act.—§§1989–1992, Code of 1910.

Idaho.—Trade Union Label Act.—§§1449–1455, Rev. Code of 1908.

Labor organization to appoint member of Arbitration board—§1431 Rev. Code of 1909.

Coercion against joining or being member of labor organization unlawful—Section 1456, Rev. Code of 1909.

Louisiana.—Trade Union Label Act—No. 49 Acts of 1898. Section 1, p. 136 of Act No. 50 of 1890 provides that any trades unions as now established in this state may become incorporated.

Maine.—Trade Union Label Act—Ch. 40, §§30–36, Revised Statutes 1903.

Ch. 207 §1 of Acts of 1909 permits special insurance rates for members of labor unions taken out through their secretaries.

Arbitrator chosen from labor organization, Ch. 229, §2, Acts of 1909.

Duty of Commissioner of Labor to collect statistics relative to trade unions. Ch. 65 §2 of Acts of 1911.

Maryland.—Trade Union Label Act—Art. 27, §§43–48, Pub. Genl. Laws 1903.

Massachusetts.—Trade Union Label Act—§§7–14 of Ch. 72, Rev. Laws of 1902.

Coercion to leave union unlawful—§19, Ch. 514, Acts of 1909.

Trades Unions not subject to certain provisions of insurance law, §30, Ch. 514, Acts of 1909. Registration and prohibition of improper use of insignia of trade union,—§§31–32, Ch. 514, Acts of 1909.

Fines levied by unincorporated union according to its rules and regulations not to be held coercive. Ch. 431 of Acts of 1909.

Minnesota.—Trade Union Label Act—§§5072–5076, Rev. Laws, 1905.

Arbitration Board to contain one member recommended by a labor union—§1828, Rev. Laws, 1905.

Forgery of labor union card a crime, §5053. Coercion to leave labor union unlawful, §5097.

Nebraska.—Trade Union Label Act—§§6944–6951 Code of 1911.

One member of Arbitration Board to be chosen from a labor organization—§§3633 and 3638. Rev. Stat., 1913.

Crime for agent of labor organization to embezzle funds §8659.

Nevada.—Trades Union Label Act—Rev. L., 1912, §§4635–4637, 6691–94.

One arbitrator to be chosen from and ordering labor organization, §1930, 1934, Rev. L., 1912. Unlawful to stipulate against membership in labor organization, §6792.

Unlawful to offer bribe to representative of labor organization or for such representative to receive one, §§6794–6795.

New Hampshire.—Trades Union Label Act—Ch. 42, Acts of 1895. Embezzlement of funds of unincorporated trades union unlawful, Ch. 273, Pub. St. 1891, Ch. 1 Acts of 1905.

One Arbitrator selected from labor organization—Ch. 198, §3 of Acts of 1911.

Coercion to leave union unlawful, Ch. 208, Acts of 1913.

New Jersey.—Trades Union Label Act—pp. 1802, 5643–5648, Comp. Stat. of 1910.

Special insurance rates permitted to members of labor organizations—§116 of Ch. 191, Comp. Stat. 1910.

Coercion to leave union unlawful, §129, p. 3051, Comp. Stat. 1910.

Advertising required in paper devoted to the interest of organized labor, §23, p. 3766, Comp. Stat. 1910.

Bribery of representative of organized labor a misdemeanor, Ch. 94, §1, Acts of 1911.

New York.—Trades Union Label Act, Ch. 31, §§15–16 of Consol. L. of 1909.

Trades Unions may unite to form a corporation to acquire a hall—Ch. 3, §7, Cons. L. 1909.

Arbitrator to be appointed by labor organization—§146 of Ch. 31 Consol. L. 1909.

Bribery of representative of labor organization criminal, Ch. 40, §380, Cons. L. 1909.

Coercion to leave union prohibited, Ch. 40, §531, Cons. L. 1909.

Use of false credentials of labor organization a misdemeanor, Ch. 40, §1278, Cons. L. 1909.

Oregon.—Trades Union Label Act, §§1841–1848, Am. St. and Code 1902.

Blacklist to prevent joining labor organization prohibited, §2181, Laws of 1910.

Unauthorized use of insignia of labor organization prohibited, Ch. 73, Acts of 1911.

Porto Rico.—Not unlawful to form trade or labor unions to better conditions—Rev. St. 1911, §1653.

Coercion to leave union prohibited—§5919, Rev. Stat. 1911.

Rhode Island.—Trades Union Label Act—Ch.196, Genl. Laws of 1909.

South Dakota.—Trades Union Label Act—§§3190-3195, Pol. Code 1903.

Utah.—Trades Union Label Act—§§2720-2723, 4482-4483, Comp. L. 1907.

Member of State Board of Arbitration from labor organizations, §1324, Comp. L. 1907.

Vermont.—Trades Union Label Act—Pub. St. 1906, §4962-4967, No. 121 Acts of 1908.

One member of State Arbitration Board from a labor organization—Acts of 1912, No. 190, §1.

Wisconsin.—Trades Union Label Act—1747a, Comp. Stat. 1911. State Anti-Trust Act not to be construed to affect labor unions, §1747L, Comp. St. 1911.

APPENDIX D.

TABLE SHOWING CONNECTION WITH THE UNION, PARTICIPATION IN THE STRIKE, AND SUBSEQUENT TREATMENT BY THE UNION OF THE ELEVEN "MEMBERS AND REPRESENTATIVES" WHO PLED GUILTY TO THE CRIMINAL CHARGES.

NAME.	POSITION IN THE UNION.	PARTICIPATION IN PRAIRIE CREEK STRIKE.	RECORD PAGE	SUBSEQUENT ACTION BY THE UNION.	RECORD PAGE
Pete Stewart.	President of District 21.	Speech at Midland on May 25th. Brief, p. 80.	1312–3 1494, 1496 1711, 1457	Appointed by President White to vacancy in District 21 Executive Board October, 1915.	1644, 2433
		Damn the injunction. Brief, p. 81.	1499 1500	Received as accredited delegate to National Convention of 1916	2425
		Countersigned checks for guns.	1695 1837	and to District Conventions of 1915 and 1916.	2426
		Speech at Hartford befor the Battle.	1725	Fine paid by the Union.	2484 2471
		Phone call to Hartford meeting.	1884 1895		
		Sentenced for contempt.	2488		
		Sentenced to $1000 fine on his own plea of guilty.	2481		

Jim McNamara.	Financial Secretary of Local Union No. 1526 at Hartford. (Rec. 1724, 2450.)	Assaulted Argo at Hartford.	1188–1189 1719, 1751	Re-elected check-weighman by his Local (1526) as soon as he came out of jail.	1743
		Speech prior to Riot.	1721	Received as accredited delegate to District 21 Convention in 1916.	2445
		Speech prior to Battle.	1882, 1911 1895, 1900	Union spent funds to secure his pardon.	2440–2442
		Field leader at Battle.	1589, 1697 1698, 1779	Collections for his benefit.	2450–2452
		Admission of participation.	1590		
		Phoned to Stewart.	1592		
		Distributed arms and ammunition.	1727, 1732 1752		
		Visited merchants to close stores.	1750		
		Plea of guilty and sentence.	2482		
Fred Holt.	Secretary-Treasurer District 21.	Bought and shipped high-power rifles and ammunition to the Unionists.	1598, 1601 1614–1615 1653, 1691 1693 1835–7	Praised in United Mine Workers Journal.	2394 2397
				Treated as a martyr by President White in 1916 Report.	2426
		Sentenced on plea of guilty.	2482	Union paid his $1000 fine.	2484 2471
Jim Slankard.	Prominent Union member and Committeeman (2383) Constable of Hartford. (1210–1212).	Member of Local Union Committee at Riot of April 6th.	1155, 1184–6	Never disciplined by the Union.	480–482 2744–2745
		Speech during Riot.	1198 1427, 1721	Fine paid by Union.	2484 2471
		Union leader at Riot.	1218, 1800		
		Pled guilty and sentenced.	2479		
		Participated in numerous intimidations between April 6th and July 17th.	1255, 1322 1519–1520		
		Shot up Frogtown to bring on the Battle.	1460–1461		
		Present at Log Cabin murders.	1540, 1541 1544, 1545 1552, 1663 1664		
		Defendant ir Looper			

		July 17th.	1519–1520		
		Shot up Frogtown to bring on the Battle.	1460–1461		
		Present at Log Cabin murders.	1540, 1541 1544, 1545 1552, 1663 1664		
		Defendant ir Looper suit.	236Fed.336		
		Speech at Hartford before the Battle.	1909		
		Pled guilty and sentenced in criminal proceedings.	2479		
Sandy Robinson.	Member of Local 2110 (2381).	Took part in Riot of April 6.	1840, 1741	Exonerated by Local 2110 from dues during strike.	2381
		Participated in many assaults and intimidations between April 6th and July 17th.	1322, 1432 1565, 1670 1430, 1257 1431, 1702 1780	Continued member in good standing.	1744
		Recognized as one of armed Unionists surrounding mines night before Battle.	1776–1778	Union paid his fine.	2484 2471
		Helped rescue prisoner from U. S. Marshal.	1778		
		Sentenced for contempt	2488		
		Indicted for conspiracy and sentenced on plea of guilty.	2408, 2418 2478		
Clint Burris.	Member of Committees in Local 1565. (2379, 1744, 2379, 2446, 2467, 1786).	Took prominent part in Riot of April 6th.	1190, 1199 1206, 1208 1218, 1795 1839, 1213 1353, 1219 1428	Delegate to Convention in August, 1914. Exonerated from dues April-June, 1914.	2379 2378
		Participated in many assaults and intimidations between April 6 and July 17.	1210, 1353 1322, 1504 1538, 1543 1670, 1702 1422, 1871 1430, 1520 1785	Put on committees after release from jail. Union paid fine.	 2471 2484
		Took part in the Battle.	2420		
		Sentenced for contempt.	2488		

		from U. S. Marshal.	1778		
		Sentenced for contempt	2488		
		Indicted for conspiracy and sentenced on plea of guilty.	2408, 2418 2478		
Clint Burris.	Member of Committees in Local 1565. (2379, 1744, 2379, 2446, 2467, 1786).	Took prominent part in Riot of April 6th.	1190, 1199 1206, 1208 1218, 1795 1839, 1213 1353, 1219 1428	Delegate to Convention in August, 1914.	2379
				Exonerated from dues April-June, 1914.	2378
		Participated in many assaults and intimidations between April 6 and July 17.	1210, 1353 1322, 1504 1538, 1543 1670, 1702 1422, 1871 1430, 1520 1785	Put on committees after release from jail.	
				Union paid fine.	2471 2484
		Took part in the Battle.	2420		
		Sentenced for contempt.	2488		
		Sentenced for conspiracy on plea of guilty.	2477		
John Manick.	President Local Union No. 1565. (2379, 2380).	Member of Committee and active participant in Riot of April 6th.	1156, 1791 1184, 1161 1795, 1839	Exonerated from dues.	2379
				Union furnished bail.	2437
				Delegate to Convention.	2443, 2445
		Took part in numerous assaults between April 6 and July 17.	1431, 1780 1511, 1543 1564, 1702 1785, 1783		
		Speech prior to Battle.	1886	Union paid his fine.	2484 2471
		Took part in Battle.	1533, 1869		
		Sentenced for contempt.	2489		
		Sentenced for conspiracy on his plea of guilty.	2408, 2418 2422, 2480		
James Crossley.	Member of Union. (2406, 2408, 2472).	Wrote letter threatening the life of Judge Youmans.	1820, 1821 2408, 2418	Appointed Financial Secretary of Local 2110 shortly after release.	2448
		Pled guilty.	2483	Placed on Union pension list five days after release from jail.	2467 2472
				Aid from District 21.	2471
[illegible]	[illegible]	Received and distrib-		Approved as delegate to District	

		Sentenced for conspiracy on plea of guilty.	2477		
John Manick.	President Local Union No. 1565. (2379, 2380).	Member of Committee and active participant in Riot of April 6th.	1156, 1791 1184, 1161 1795, 1839	Exonerated from dues. Union furnished bail. Delegate to Convention.	2379 2437 2443, 2445
		Took part in numerous assaults between April 6 and July 17.	1431, 1780 1511, 1543 1564, 1702 1785, 1783		
		Speech prior to Battle.	1886	Union paid his fine.	2484 2471
		Took part in Battle.	1533, 1869		
		Sentenced for contempt.	2489		
		Sentenced for conspiracy on his plea of guilty.	2408, 2418 2422, 2480		
James Crossley.	Member of Union. (2406, 2408, 2472).	Wrote letter threatening the life of Judge Youmans.	1820, 1821 2408, 2418	Appointed Financial Secretary of Local 2110 shortly after release.	2448
		Pled guilty.	2483	Placed on Union pension list five days after release from jail.	2467 2472
				Aid from District 21.	2471
Oscar Layton.	Member of Local No. 1565 (1744); also Local No. 2769 (2382).	Received and distributed arms and ammunition for the Battle.	1609, 1615 1651, 1686 1689, 1694	Approved as delegate to District Convention, 1915. Union committeeman.	2442, 2443 2452
		Rescued prisoner from U. S. Marshal.	2422	Union paid his fine.	2484 2471
		Sentenced for conspiracy on plea of guilty.	2418, 2422 2482–2483		
Dave Brauch.	Member of Local Union No. 2770 (2382).	Rescued prisoner from U. S. Marshal.	2422, 1834 1776, 1879	Fine paid by Union (but later he repaid it).	2484 2471
		Pled guilty and sentenced.	2408, 2418 2422		
Will Reed.	Member of Local Union No. 2770 (2382, 2384).	Intimidated Argo.	1187	Fine paid by Union.	2484 2471
		Took part in Battle.	2420		
		Rescued prisoner from U. S. Marshal.	2422, 1834 1879		
		Pled guilty and sentenced.	2408, 2418 2422		

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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1920.

UNITED MINE WORKERS OF AMERICA, *et al.*,
Plaintiffs-in-error,

against

CORONADO COAL COMPANY, *et al.*,
Defendants-in-error.

In Error to the United States Circuit Court of Appeals for the Eighth Circuit:

BRIEF AND ARGUMENT FOR PLAINTIFFS-IN-ERROR.

HENRY WARRUM
G. L. GRANT
Attorneys for plaintiffs-in-error.

CHARLES E. HUGHES
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G. L. GRANT
ALLEN S. HUBBARD,
Of Counsel.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1920,

No. 239.

UNITED MINE WORKERS OF AMERICA, *et al.*,
Plaintiffs-in-error,

against

CORONADO COAL COMPANY, *et al.*,
Defendants-in-error.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT:

BRIEF AND ARGUMENT FOR PLAINTIFFS-IN-ERROR.

Statement of the Case.

This is a writ of error to review a judgment of the Circuit Court of Appeals for the Eighth Circuit affirming a judgment of the District Court for the Western District of Arkansas in favor of plaintiffs (defendants in error here) for $625,000.

The case is also here on petition for certiorari which was filed in order to avoid any question as to the jurisdiction of this Court to review the judgment. Decision on the petition has been withheld until the hearing on the writ of error.

The action is brought under Section 7 of the Sherman Act (Act of July 2, 1890, 26 Stat. 209) to recover treble damages alleged to have been sustained by the plaintiffs at the hands of an unlawful combination in restraint of interstate trade and commerce.

Those named as defendants include the United Mine Workers of America, District No. 21 United Mine Workers of America and 27 local unions,—all voluntary unincorporated associations of mine workers.

The original complaint was filed September 1, 1914. Process was served upon officers of the defendant associations. Each union entered its special appearance and moved to quash the service of the summons upon the ground that it was an unincorporated society or labor union, not a legal entity and not capable of being sued (Transcript, pp. 58-74, 86, 90-104). These motions were overruled with exceptions (*id.*, pp. 78-88, 105).

The defendants subsequently filed a demurrer to the complaint, which was sustained by the District Court (Judge Youmans) upon the ground that "the complaint fails to disclose that this court has any jurisdiction of the cause of action therein set forth for the reason that the acts of the defendants complained of were not an interference with interstate commerce or a violation of the Federal statute upon which the complaint was predicated." Plaintiffs sued out a writ of

error and the ruling and judgment of the District Court were reversed. (*Dowd, Rec., et al.* v. *United Mine Workers of America, et al.*, 235 Fed. 1.)

The cause was reinstated and the third amended complaint was then filed, which set forth in substance the following allegations:

THIRD AMENDED COMPLAINT.

Description of Plaintiffs—The complaint alleged that by a single degree in equity, a receiver had been appointed for the nine coal companies named therein and that he had taken possession of the properties and assets of the companies; that four of the companies named in the complaint, the Hartford Coal Company, the Mammoth Vein Coal Company, the Coronado Coal Company and the Prairie Creek Coal Mining Company, owned and prior to April 1, 1914, had operated coal mines in Sebastian County, Arkansas (Transcript, pp. 181, 182); that the Hartford Coal Company was an Oklahoma corporation (*id.*, p. 181); for over a year prior to April 1, 1914, it had been closed down but when in operation, it had employed about seventy men and had produced and shipped coal of an annual value in excess of $50,000 (*id.*, pp. 182, 192). That the Mammoth Vein Coal Company was an Arkansas corporation; it employed about three hundred men and produced and shipped coal of an annual value in excess of $120,000. That the Coronado Coal Company was a West Virginia corporation; it employed about two hundred and fifty men and produced and shipped coal of an annual value in excess of $175,000. That the Prairie Creek Coal Mining Company was an Arkansas corporation;

it employed about two hundred and fifty men and produced and shipped coal of an annual value in excess of $120,000. That the Mammoth Vein Coal Mining Company was a West Virginia corporation which, prior to April 1, 1914, had agreed to operate the mines of the Mammoth Vein Coal Company and the Prairie Creek Coal Company (*id.*, pp. 181, 182).

The other companies named in the complaint were alleged to be "financially interested in one or more of the aforesaid operating companies, either through contracts or the lease of coal lands on which said operating companies were working or through the ownership of all or the majority of the stock of said operating companies" (*id.*, p. 182).

It is further stated that about 75 per cent of the shipments of the operating companies were made by common carriers on interstate trains to points outside of the State of Arkansas, including the States of Oklahoma, Kansas, Nebraska, Texas and Missouri (*id.*, pp. 182, 183).

Defendants—The complaint alleged that the United Mine Workers of America was an unincorporated association of over four hundred thousand members engaged in mining and shipping coal in different mines in different states of the United States; that it was subdivided into about thirty districts and numerous local unions which it was alleged "are agencies created by said United Mine Workers of America to carry out the purposes and objects of said national organization"; that District 21 of the United Mine Workers of America has jurisdiction over all the union miners and mines in the States of Arkansas, Oklahoma and Texas; that the local unions named

as defendants are unincorporated associations of mine workers in the State of Arkansas whose members "are so numerous as to make it impracticable to make all of said members defendants herein, and therefore the plaintiffs pray that the said local unions may be brought into court by service upon their respective officers." It is also alleged that "because of the numerous members of said United Mine Workers of America, it is impossible to make each one a party defendant to this cause." Various officers of the national organization are named and it is stated "that said defendants sufficiently represent the United Mine Workers of America for the purpose of this action and that the service of process upon them and the trial of the suit in which they are parties will constitute proper representation of the United Mine Workers of America" (*id.*, pp. 183, 185).

The complaint alleged that the United Mine Workers of America divided the coal mines of the United States into two classes, one class being called "union" or organized mines, because they are operated under an agreement with the United Mine Workers of America, or one of its district branches to employ none but members of that Union and to comply with the rules of the Union, —the other class being non-union, unorganized or "open shop" mines because they refuse to make such an agreement with the Union. That owing to the restrictions and unreasonable regulations which, it is alleged, the United Mine Workers of America imposed on all union or organized mines, these mines were conducted wastefully and inefficiently and the cost of production and the selling prices of union coal was thereby unreasonably and

unnecessarily enhanced and could not successfully compete with the products of non-union mines throughout the course of interstate trade and commerce; that at least 60 per cent of the entire production of bituminous coal in the United States was produced by the union or organized mines; that in the states of Illinois, Ohio, Indiana, Wyoming, Michigan, Missouri, Iowa, Texas, Arkansas and Oklahoma all of the coal mines are union mines while in the states of Pennsylvania, Kentucky and West Virginia part of the mines are union mines; and that if the efforts of the defendants to unionize all the bituminous coal mines of Pennsylvania, West Virginia, Virginia and Colorado are successful, then about 90 per cent of the bituminous coal produced in the United States which enters into interstate trade and commerce will be coal produced by union mines (*id.*, pp. 185-187).

The complaint further alleged that the United Mine Workers of America, the defendants, and many other persons to the plaintiffs unknown, were and for many years past had been engaged in an unlawful combination and conspiracy to exclude and drive out of interstate trade and commerce, and to restrain and prevent all interstate trade and commerce in, any and all coal produced, loaded and shipped by so-called non-union and unorganized mines by hampering, preventing and interfering with the production, loading and shipment of coal for interstate commerce in any of the coal mining states by any so-called unorganized or non-union mines, so that it could not become a subject or commodity of interstate trade and commerce and could not enter into interstate competition with the products of so-called union

or organized mines located in the different states. That one of the objects of the alleged unlawful combination was to monopolize the trade or occupation of mining coal for the members of the United Mine Workers of America and prevent the employment of non-union men in any part of the United States at the trade or craft of mining coal and prevent the products of the labor of non-union mines in any part of the United States from becoming subjects or commodities of interstate trade (id., pp. 187-189).

It was also alleged that defendants in furtherance of the alleged unlawful combination had ordered and coerced strikes of employees at unorganized mines in different States and by violence, intimidation, mobs and riots had prevented the employment of any miners in said mines for the production, loading or shipment of coal in interstate commerce and by dynamite and arson and other unlawful means had destroyed the facilities of unorganized mines for producing, loading and shipping coal for interstate commerce; that they had from time to time since 1898 entered into understandings and agreements with the operators of union mines in Ohio, Illinois, Indiana and other States whereby they were required to use all the means in their power to interfere with and prevent interstate commerce in bituminous coal by all unorganized mines and by all competitive mines which should thereafter become non-union or unorganized; that at various times since 1898, in the State of Pennsylvania, by the use of violence, intimidation and threats they had prevented the employment of operatives for the production of coal and by fire and explosives had destroyed the facilities for such production,

loading and shipment of coal; that in 1911, these means had been employed against non-union mines in Westmoreland and Irwin districts, Pennsylvania; in 1913 in Colorado; and in West Virginia at various times since 1906 (*id.*, pp. 189-192).

The complaint further alleged that early in 1914, it was decided that the mines of the companies named in the complaint should be operated upon a non-union or open shop basis; "that said plan of operation for said mines was in part to be carried out by having the Mammoth Vein Coal Mining Company operate the mines of the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company"; that about the middle of March, 1914, the Mammoth Vein Coal Company and Prairie Creek Coal Mining Company closed down their mines preparatory to reopening upon a non-union or open shop basis in the month of April, 1914; and that it was the intention of the Hartford Coal Company and the Coronado Coal Company to open its mines upon an open shop basis as soon as this became expedient. That the Hartford Coal Company had not been in operation for over a year previous, but that the Coronado mine had continued to run as a union mine until a strike was called on April 18, 1914, as a result of the non-union policy put into effect by the owners at the Mammoth Vein and Prairie Creek mines. That in April, 1914, and at various times thereafter, the defendants and those acting in conjunction with them, in furtherance of their combination and conspiracy to drive non-union coal out of interstate trade and in furtherance of their understanding with the proprietors of union mines competing with the mines of

plaintiffs by threats, intimidation, violence and unlawful assemblies drove and frightened away all the men employed by said mines; and by threats, violence, murder, mobs and riots prevented the said companies from employing any other persons in and about the mines and by fire, dynamite and other explosives destroyed the structures and other valuable facilities of said mines for the production, loading and shipment of coal for interstate commerce; that by these unlawful means defendants and those acting with them prevented any of the plaintiff companies from engaging or continuing to engage in interstate commerce and that this was the purpose of defendants in thus intimidating the employees and in destroying the plant and equipment at the mines (*id.*, pp. 192-197).

The damages alleged to have been sustained by the nine companies as a result of the destruction of the plant and equipment of some of them were fixed by the complaint at $740,689.42. The principal part of this sum is made up by the claim that the companies had valuable leasehold interests in the surrounding coal property which were cancelled by the lessors as a result of the destruction of the equipment at the mines.

It was alleged that the conspiracy of the defendants was an unlawful contract, combination and conspiracy in restraint of trade and commerce among the States in violation of the Federal Anti-Trust Act of 1890 and under the Act treble damages were demanded (*id.*, p. 200).

A second count of the complaint repeated the above allegations and set forth an alleged cause of action for punitive damages.

The Demurrer.

Demurrers to this complaint were filed upon the grounds, in substance (*id.*, pp. 207-210):

1. That the complaint did not show interference with interstate commerce or a violation of the Sherman Act and that the court was without jurisdiction.

2. That the complaint showed that the defendants, apart from the individual defendants, were voluntary unincorporated associations or labor unions, not organized for profit, and not carrying on or engaged in any kind of business, within the meaning of the Sherman Anti-Trust Act, have no legal entity apart from their membership, and are not capable of being sued in this action.

3. That the complaint showed that the plaintiffs named therein had no such community of interest in the money sued for as to entitle them to sue jointly; and that there was a misjoinder of parties plaintiff.

4. That the complaint showed upon its face that the plaintiffs had no such community of interest as to entitle them to sue jointly; that their interests were separate, several and distinct.

5. That there was a misjoinder of causes of action.

The demurrers were overruled and exceptions taken (*id.*, pp. 3239, 3240).

Motion to Strike Out.

In order to obviate any objection based upon the Arkansas practice, the objection of misjoinder of parties plaintiff and misjoinder of causes of action was taken by motion to strike out as well

as by demurrer. The motion was overruled and exceptions entered (*id.*, pp. 214, 223).

The Answers.

Separate answers were filed on behalf of the United Mine Workers of America, of District No. 21, of the local unions and of the individual defendants. Each answer denied all the material allegations of the complaint and set up as affirmative defenses the various objections to the complaint previously taken by demurrer and alleged that if any officer or member of the association became a party to a conspiracy to destroy the business and property of non-union mines, he did so without the authority or consent of the association (*id.*, pp. 238-269).

Upon the issues thus joined, the cause came on for trial before District Judge Elliott on October 23, 1917. At the conclusion of the evidence, each of the defendants moved for the direction of a verdict (*id.*, pp. 350, 3179). The refusal of the trial court to grant these motions is assigned as error.

The Evidence.

The evidence may be divided into four parts: (1) the constitution of United Mine Workers of America; (2) evidence relating to the alleged combination in restraint of interstate trade and commerce; (3) evidence relating to the alleged strike and destruction of plaintiffs' property; (4) evidence relating to the alleged ratification by the International Union, as the United Mine Workers of America is called, and by District 21, of the acts of the members of a few Arkansas locals.

1. The constitution of the United Mine Workers of America (id., pp. 419-451).

We review this constitution for the purpose of showing (1) that the objects and purposes of the association are lawful; (2) the limited powers of the officers of the association; and (3) that there is no basis for the contention urged by plaintiffs and alleged in paragraph seven of the complaint that the district branches and local unions are in any legal sense whatever agencies of the international organization.

CONSTITUTION OF THE INTERNATIONAL UNION.

Preamble: The preamble of the constitution recites that the Union was formed "for the purpose of establishing by *lawful* means the principles embraced in the body of this constitution" (italics ours).

Objects: The objects of the association are:

"First: To unite in one organization, regardless of creed, color or nationality, all workmen eligible for membership, employed in and around coal mines, coal washers and coke ovens on the American Continent.

"Second: To increase the wages, and improve the conditions of employment of our members by legislation, conciliation, joint agreements or strikes.

"Third: To demand that not more than eight hours from bank to bank in each twenty-four hours shall be worked by members of our organization.

"Fourth: To strive for a minimum wage scale for all members of our craft.

"Fifth: To provide for the education of our children by lawfully prohibiting their employment until they have at least reached sixteen years of age.

"Sixth: To secure equitable statutory old age pension and workmen's compensation laws.

"Seventh: To enforce existing just laws and to secure the repeal of those which are unjust.

"Eighth: To secure by legislative enactment, laws protecting the limbs, lives and health of our members; establishing our right to organize; prohibiting the use of deception to secure strike breakers; preventing the employment of privately armed guards during labor disputes; and such other legislation as will be beneficial to the members of our craft."

Organization: The International Union is composed of all workmen eligible for membership and is divided into districts, subdistricts and local unions.

The basic organizations are the local unions. They are composed of ten or more workmen, skilled and unskilled, working in or about coal mines, coal washers or coke ovens. No local union may exercise jurisdiction over more than one mine. All union workmen at that mine must belong to the same local (Art. XIV, *id.*, p. 437).

Members of the local unions elect their own officers, delegates to the International convention (Article XII, *id.*, p. 433), and on a referen-

dum vote, officers of the International Union (Art. XI, *id.*, p. 428). The members of the local unions located in Arkansas, Oklahoma and Texas also elect delegates to the District Convention and the officers of the District comprising these States (Arts. VIII and IX, Constitution of District 21; *id.*, pp. 2835, 2839).

International Convention: The supreme governing body of the International Union is the International Convention. It is composed of delegates elected by the members of the various locals. Its regular meeting is held biennially at such place as is determined by the previous convention. It considers resolutions, grievances, constitutional amendments and while in session has full power to direct the organization (Art. XII, Constitution of United Mine Workers of America; *id.*, pp. 433-436).

The International Executive Board: Between Conventions, the International Executive Board has executive authority (Art. IX, Sec. 24; *id.*, p. 425). It is composed of representatives from the various districts, each district being given one member on the Executive Board. The President, Vice-President and Secretary-Treasurer of the International Union are also members of the Board by virtue of their positions. All the funds of the association in excess of $15,000 are required to be deposited to the order of the Board (Art. IX, Sec. 20; *id.*, p. 425), and the Board is required to hold them in trust for the United Mine Workers of America and "under no circumstances shall said money be drawn upon except upon the written order of two-thirds of the members of the Board" (Art. IX, Sec. 26; *id.*, p. 426).

Power is given to the Board, between Conventions, by a two-thirds vote, to recommend the calling of a general strike but the strike itself must be authorized by a referendum vote of the members (Art. IX, Sec. 27; *id.*, p. 426). It has authority to levy and collect assessments when necessary, but no assessment levied by the Board may be collected for more than two months unless authorized by a referendum vote of the members (Art. IX, Sec. 25; *id.*, p. 425). The Board exercises general control over the officers of the association.

Officers: The principal officers of the International Union are the President, Vice-President and Secretary-Treasurer (Art. VII; *id.*, p. 422). The other officers, three tellers, three auditors and delegates to the American Federation of Labor Convention, have positions corresponding to their titles and are paid $5 per day when employed (Art. X; Sec. 1; *id.*, p. 427). Members of the Executive Board are also officers (Art. VII; *id.*, p. 422). Their powers and duties have already been considered.

The duties of the President are in general to devote all his time to the affairs of the organization, executing the instructions of the International Executive Board, to exercise within the limits of his authority general supervision over the field and office work of the International Union, and to render a report of his stewardship to the regular International Convention (Art. IX, Sec. 12; p. 424). He has power, subject to the approval of the International Executive Board, to make appointments, suspensions and removals from office of employees or international officers (Art. IX, Secs. 2, 3, 4, 5, 9, 10, 13; *id.*, pp. 423-424). He also has authority to interpret the

meaning of the International Constitution, but his interpretation is subject to repeal by the International Executive Board (Art. IX, Sec. 7; *id.*, p. 423).

The Vice-President has no other duties than to work under the instructions of the President and the International Executive Board and in event that the presidency is vacated by resignation or removal from office to succeed to that position (Art. IX, Sec. 14; *id.*, p. 424).

The Secretary-Treasurer has charge of all the books, documents and effects of the International office (Art. IX, Sec. 15; *id.*, p. 424); receives all moneys due the International Union and pays all bills and current expenses (Art. IX, Sec. 17; *id.*, p. 425). He is required to give a bond of $25,000, approved by the International Executive Board, to insure a faithful discharge of his duties. He is never permitted to have more than $15,000 subject to his order at any one time but all amounts in excess of this sum received by him must be deposited in banks giving interest-bearing certificates of deposit, subject to the order of the International Executive Board (Art. IX, Secs. 19, 20; *id.*, p. 425).

Revenue: The revenue of the International Union is obtained from charter fees and a per capita tax of twenty-five cents per month per member, which is paid directly to the International Secretary-Treasurer by the local unions, and such additional assessments as may be levied in accordance with the constitution (Art. XIV, Secs. 5, 12, 13, 15; *id.*, pp. 437, 438).

Strikes: The constitution classifies strikes as follows: (1) Where the major portion of the mem-

bers of a district are to be involved, (2) where the strike is in an unorganized field, (3) where the strike is in an organized field, but is to be financed by the International Union; and (4) where the strike is in an organized field and is not to be financed by the International Union. In the first three cases the sanction of an International Convention or of the International Executive Board must be procured before a strike may be called (Art. XVI, *id.*, p. 446). In the last case, the District is permitted to call a strike upon its own responsibility (*id.*, Sec. 2).

The strike which was called at the Coronado mines was of this last type,—called and conducted by District 21, without the sanction of the International Executive Board (*id.*, pp. 1629, 1637).

CONSTITUTION OF DISTRICT No. 21 (*id.*, pp. 2829-2853):

The constitution of District No. 21 follows closely the form of the International constitution. The supreme governing body is the District Convention which meets biennially at a place determined by the preceding convention. Representatives to the District Convention are elected directly from the local unions comprised in the District. Between meetings of the District Convention, the control of the District is vested in a District Executive Board. This board holds in trust all moneys deposited by the Secretary-Treasurer in the name of the Executive Board. It has powers for the District corresponding to those vested in the International Executive Board for the International Union. The principal officers of the District are the President, Vice-President and Secretary-Treasurer. These officers

perform their duties under the supervision of the District Executive Board. The Secretary-Treasurer of the district is required to give a bond in the sum of $30,000 and is not permitted to have more than $5,000 subject to his order at any one time. Upon receiving funds in excess of this sum, he is required to deposit the same in banks giving interest-bearing certificates of deposit, subject to the order of the District Executive Board (Art. VII, *id.*, pp. 2832, 2833). The revenue of the district is derived from the local unions in the district. A twenty-five cent per capita tax per month is laid in order to pay expenses. A strike or defense fund is created by an assessment of thirty-five cents per month per member; and an old age pension fund by an assessment of fifteen cents per month per member (Art. X, *id.*, p. 2842).

The provisions of the constitution of District 21 as to strikes vary considerably from those of the International Constitution. (Art. XII (*id.*, p. 2849) provides that when trouble of a local character arises between the members of local unions and their employers, the mine committee and officers of the local unions shall endeavor to effect an amicable adjustment, and failing in this, they shall immediately notify the officers of the district and if the district officers find that a strike would best serve the interests of the locality affected, a strike may be ordered. It is further provided that before final action is taken by the district upon questions that directly or indirectly affect the interests of the mine workers of another district or may require a strike to determine, the President and Secretary of the aggrieved district shall jointly prepare, sign and forward to the National President a statement setting forth

the grievance complained of, the action contemplated by the district, together with the reasons therefor, and await the decision of the National President and be governed thereby.

2. **The alleged combination in restraint of interstate trade.**

It may be stated categorically that there is no evidence in the record tending to show that the association, United Mine Workers of America, had any intent to interfere with interstate commerce in coal. The organization, and the efforts of defendants' officers to extend its membership only had reference to *production*, to the methods of production, and not to interstate commerce in coal. (See Point Fifth, *infra.*)

The evidence introduced by the plaintiffs as to the alleged combination is as follows:

1. *Joint conference debates, and alleged conspiracy between union operators and miners in the central competitive field.*

Since 1898, the operators and miners in the central competitive field comprising Western Pennsylvania, Illinois, Ohio and Indiana, have held joint conferences for the establishment of wage scales and mining conditions. The proceedings at these conferences were described by defendants' witness Green (Transcript, pp. 453-469). The miners in their conventions adopt what is known as a scale demand consisting of their demands as to wages and working conditions. They thereupon select delegates to present the demands at a joint conference with the operators. The conference is called and the demands presented.

The operators respond usually with counter-proposals (*id.*, p. 463). Then follow debates in which the miners' representatives offer their arguments in support of the demands and the operators respond with their arguments in opposition. The debates have usually been very heated, covering a period from one to three weeks (*id.*, pp. 462-465).

The purpose of the operators at these debates was to prevent the acceptance of the demands that had been submitted by the miners. They, therefore, were continually harping upon the excessive cost of the production of coal in the central competitive field as compared with that of the neighboring non-union mines. One of the miners described this situation exactly (*id.*, p. 1079):

> "Every time the operators of Illinois have been able, in a certain field, to enforce an advantage under certain conditions, when we attempted to have these things rectified, we have been met with every argument that could be produced on competition from West Virginia, of Pittsburg district—and I think they went in British Columbia and Canada to get places where coal was being produced cheaper than in that district."

This primary purpose of the operators to make it appear to the miners that they were already paying more than their competitors for the production of coal, determined the character of these debates.

Plaintiffs culled many extracts from the reports of these debates and read them into the record over the objections and exceptions of the defendants (*id.*, pp. 543, 553, 556, 589, 644-654,

2353; see Stipulation, p. 580). The reports themselves were never properly authenticated and their admission in evidence, we submit, was highly prejudicial to the defendants and constitutes reversible error. If plaintiffs had desired to show what went on at these debates, they could easily have summoned to their aid any number of operators who would have been subject to cross-examination by defendants. Instead of this, they adopted the course of reading into the record speeches by operators and miners which, it may be presumed, they considered most favorable to their contentions.

Apart from the plain inadmissibility of these reports, we propose to consider the purport and effect of the extracts that were read into the record by the plaintiffs.

(a) *Speeches by operators*: Beginning with the first joint conference in 1898, down to the last conference referred to in the testimony in 1914, the operators were continually hammering at the miners that they could not grant the latter's demands because of the competition from the non-union unorganized mines, especially in West Virginia.

In the joint conference of 1904, Mr. Bogle, an Indiana operator, said (*id.*, 557):

> "Mr. Mitchell belittles West Virginia competition. He has always done so. Outside competition at all times has been belittled. He says the operators have, every time they have held a convention, brought in this West Virginia bugaboo. It is true that we have. Furthermore, circumstances which favored us in the last few years also favored

> West Virginia. She has not had so much difficulty in marketing her product as she had when these conventions were first held. For the last four months she has been confronted with a loss of market, with an inability to place her product—not the product of four or five years ago, but a largely increased product—and already she is knocking at our doors, already she is coming into our markets and taking contracts for the ensuing year in competition with each one of the four states in this movement, at prices which it is impossible for us, under our present scale, to meet. It is a reality, gentlemen, it is not a bugaboo; it is not so that we can agree to pay you our present scale and then go back and try to meet the conditions and have our mines lie idle."

In 1906, Mr. Penna, another Indiana operator, presented the same argument as follows (*id.*, p. 573):

> "It occurs to me if there is to be a demand for an advance in wages it is being made, not only at the wrong time, but in the wrong place. Why should this little competitive district be made the center for continual demands? Is it because the employers of this competitive field have always favored peace? Is it because the employers of this competitive field have always favored miners' unions? Is it because they have always been ready and willing and glad to meet you? Is it because they have given you more advances in wages, but the check-off and the eight-hour day? You have got these things out of the Joint Conventions, gentlemen, and the same employers who gave them to you gladly when they were able to do so, are the men who today protest seriously and sincerely that it is not the time or the place to demand an advance in wages. Is it because we are always

meeting you, and you cannot reach the other people? Why not go to some of those who are not as high as the states here represented and bring them up first. We are willing to keep in the lead; we are willing to set the pace; we are willing to pay higher wages than any other part; and we are willing to meet with you and treat with you, and willing to keep the peace, but we are not willing that you should come and hold us up at all times when you are unable to catch the other people and bring them approximately to where we are."

In the following convention of 1908, Mr. Jones of Pennsylvania put forward the same argument (*id.*, 579):

"At the present time there is coal being mined in non-union districts, and it is encroaching upon our markets; even in places where they have differences between them they are dropping them and taking away the contracts from the union fields. The question has been asked, why haven't we had this state of affairs during the past two years? The reason is, we have had very prosperous times, and there was plenty of trade for all. This is not the case at the present time; and if the operators mining in non-union fields in this district can maintain their present position, i. e., have their coal mined at ten cents to twenty cents per ton less than operators employing union labor, and are enabled to market their coal at the prices at which they are marketing it, it is going to place both operators and miners in a very embarrassing position in the very near future.

"In the Pittsburg district, which is the greatest industrial center in the world, the largest number of operators who are mining coal with non-union miners have already forced a reduction of from ten to twelve per

cent. Now you should make a settlement for two years and turn your guns where they belong."

In the joint conference of 1910, Mr. Maurer, a Pennsylvania operator, said (*id.*, pp. 592-593):

> "Now let us be fair to each other. If there is anything in trades agreements they must be based on equality; not how much we can force the other fellow to pay, but how much they ought to pay in order that they may get a fair return for their investment, for their time and for their energy, and in order that you may get a fair return on your labor. I appeal to you in all fairness, and if any miner on that side doubts my word, if he will come to the city of Cleveland I will open the books of every operator in that city that does business in the State of Ohio. Don't get away from the fact that we cannot pay you more than we get. We are willing to pay you every dollar we can, and for two years we paid you dollars you never earned. Keep one thing in mind—keep the facts staring you in the face that for two years your mines have laid idle while West Virginia non-union tonnage took the markets that belonged to you and to us. We stand next to these markets. In order to maintain our markets we on this side invested our money in the great Northwest and built docks to keep the market for you. That market today is in jeopardy on account of the competition from West Virginia. Tell me, tell me in fairness, is our position not right? Considering the last two years' experience, can you honestly ask for an advance in wages?"

In the conference of 1912, Mr. Penna said (*id.*, p. 608):

> "We are up against this competition, there is no use trying to get away from it. In your

non-union fields your men work ten hours a day as a minimum and the maximum is unmentioned—anywhere from that to twenty-five. For ten hours the day men get about $1.50, and if they work twelve or fourteen hours a day they may get a little more. I don't know whether they do or not. The coal is weighed or measured, and our experience has usually been that when coal is measured in coal cars those cars seldom get any smaller. And you say you cannot organize those people and their product goes in direct competition with ours. One reason you cannot organize them is because they have certain methods to which resort to prevent organization. * * * Organize those Virginians and organize those Kentuckians, organize central Pennsylvania and then move up together. Level up and then move, but don't keep moving the highest."

The objections of the operators had apparently considerably died down by 1914, but plaintiffs read the following extract into the record from speeches in that year which showed the operators' attitude. Thus Mr. Maurer, a Pennsylvania operator, said (*id.*, p. 618):

"Eastern Ohio meets on the right hand side Pennsylvania. Across the river to the southeast non-union West Virginia. Across the river to the south and southwest, Kentucky, again non-union, and that coal has to go into the markets that their coal goes into, and I want to go that if Mr. Green with all his ingenuity can find some system by which you could get more for your product than your competitors can, then he is very foolish to waste his time, for I am sure he could command a very large salary with any of the coal companies who have been striving for years to arrive at that position."

The above passages from extracts introduced in evidence by plaintiffs sufficiently show the general character of the statements made by the operators at these conferences. It can be presumed that the speeches made by other operators which are quoted in the eight volumes of reports and which were not read into the record by plaintiffs are less favorable to plaintiffs' contentions. The general character of the debates and the result of the operators to the West Virginia argument is well described by defendants' witness Taylor, an operator who had attended many conferences and who had himself helped organize the first conference in 1898 (*id.*, p. 2769). The following occurred on cross-examination by plaintiffs' counsel (*id.*, p. 2771):

> "Q. Now, at these conferences, was it not a fact that the operators were continually referring to the eighth clauses of the Chicago Agreement as imposing on the miners an obligation, to protect them against the competition of non-union fields, particularly West Virginia?
>
> "A. I cannot say from memory that they referred to any particular clause, *but I know often times it was kind of a horse trading proposition, when we didn't want to advance their wages, when they were asking for an advance, we would advance the argument that they would have to bring West Virginia up in line before they could ask for an advance, and we used all of the argument that we could to keep from paying an advance, and that was one of the best arguments that we had.*"

It is one of the favorite theories of the defendants in error that under the first agreement of 1898, the miners obligated themselves to the op-

erators to unionize West Virginia and thus protect the operators from the competition of the West Virginia mines. The primary source of this contention is apparently found in clause 8 of the Interstate Agreement, which is as follows (*id.*, p. 392):

> "8. That the United Mine Workers organization, a party to this contract, do hereby further agree to afford all possible protection to the trade and to other parties hereto against any unfair competition resulting from a failure to maintain scale rates."

Manifestly, this clause warrants no such interpretation as plaintiffs' counsel would place upon it. The unfair competition referred to in that clause is stated to result "*from a failure to maintain scale rates.*" These scale rates were the subject of the Chicago Agreement and a failure to maintain the same could arise only because certain operators in the central competitive field refused to abide by that agreement. It appears from the record that before the interstate agreement of 1898, chaotic conditions prevailed with reference to wages, even among the union miners; that in one district, or at the one mine, a certain wage scale was paid, while in an adjoining district or a neighboring mine, a different scale was accepted. The primary purpose of the interstate conference was to secure a uniform scale agreement, and the clause in question simply guaranteed and bound both parties against any secret modifications of that scale within the territory in question. The clause expressly says that they pledge themselves to prevent unfair competition from a failure to maintain *scale rates.* The non-union mines, or the mines in non-union fields, did

not have scale rates. Obviously they were not under the jurisdiction of the United Mine Workers to say what wages they should pay or accept. But they did exercise certain authority over those members of the Union who were the beneficiaries of the scale adopted. And it was a plain pledge that this scale would be maintained among them.

Not only, however, is this the plain meaning of the clause and not only does the above testimony show the condition to which it had its application, but the extracts from the joint conference debates which were read into the record by plaintiffs demonstrate that the operators themselves placed no such construction on this clause as that now urged by defendants in error. It is true that upon a number of occasions, the operators charged the miners with having undertaken in 1898 to organize the non-union fields. It is significant, however, that they made no reference to clause 8 of the Chicago Agreement in this connection. Mr. Chapman, an Ohio operator, who was perhaps more insistent than any other upon the alleged duty of the Union to organize West Virginia, expressly stated that this alleged obligation was not contained in the Agreement (*id.*, p. 614).

It is perfectly apparent, moreover, not only that there was no such provision as is insisted by the defendants-in-error in the agreement of 1898 (which shows definitely what *was* agreed to as the result of the conference), but that the "understanding" which the operators subsequently alleged and stressed was not at all of the sort asserted by defendants-in-error. If it could be said that there was any "understanding," it simply related to the unionizing of the mines in West Virginia (See statement of Bogle, *id.*, p. 2353; Mr. Robbins, p. 2356; Mr. Chapman, p. 614). It would

not be possible, we submit, to put a fair interpretation upon the evidence and extend that understanding beyond the organization of miners in West Virginia. Emphasis is made by the defendants-in-error on the statement of Mr. Green at the conference of 1910 that the United Mine Workers of America had endeavored to carry out "the promise made in Chicago in 1898" (*id.*, p. 589). It does not appear that Mr. Green was an officer in 1898, or that he attended the conference in 1898, and the evidence was received, as in the case of other reports not properly authenticated, over exception (*id.*, p. 589). But, aside from this, what was the promise described? It was said that "they have done everything in their power to redeem any promise that they may have made *to organize West Virginia.*" This merely means that the miners would endeavor to extend their membership by bringing the miners of West Virginia into the Union.

Certainly, an "understanding" that the United Mine Workers of America would try to "unionize" West Virginia, to have their members and locals in West Virginia in order to secure proper wages, hours of labor, conditions of work in the mining of coal in West Virginia, does not afford the slightest basis for the contention of any understanding, agreement or combination to restrain interstate commerce in coal.

We refer later, in connection with the proceedings of the miners' conventions to the much quoted statement of Mr. T. L. Lewis in 1901 (*id.*, p. 2356), which had no broader import and also simply related to organization of miners in West Virginia.

It should also be noted that many of the operators in the central competitive field also owned

mines in West Virginia and their protestations that the union had failed to perform its alleged obligations under the Chicago Agreement and bring West Virginia into line were wholly insincere and obviously put forth in the attempt to place the responsibility upon the union for the alleged severe competition which the operators were all the time claiming they were forced to face. This condition was described by defendants' witness Taylor, himself an operator. He said (*id.*, p. 2779):

> "Two-thirds of them had interests in West Virginia. And the miners finally took the position, 'if you gentlemen will bring your West Virginia mines in here and quit talking about it, we won't have any trouble,' and I know there were several operators, among them the Sunday Company and the Pittsburg Company, who were operating in Pennsylvania and Ohio and who were also operating in West Virginia, W. P. Rend and others; and the operators had to back down from their argument because they had to come in with their West Virginia mines or shut up."

Nor were the miners so gullible as not to appreciate the insincerity of the operators' protestations of desire that West Virginia be organized. Mr. McColloch, who at the time of trial was in the insurance business, but had at one time been an International Vice-President and had attended many joint conferences, said (*id.*, p. 2511):

> "It was simply a matter of debate and argument. There never was any real desire on the part of any of the operators to organize West Virginia. If they had not had that argument, they would not have known what else to have. The Sunday Creek Coal Company, the Mark Hanna interests, were

supposed to own mines in West Virginia, and the Pittsburgh and Buffalo."

There was no ground for a finding of conspiracy between the operators and the miners. The learned District Court evidently felt this (see *id.*, p. 3187). And it is noteworthy that the plaintiffs did not join as defendants in this action any of the operators in the central competitive field upon the theory that they were co-conspirators with the defendants. Evidently the plaintiffs had the same view as the District Court and did not "think there is very much to that operators' proposition" (*id.*). Yet, while there was no evidence, and the court apparently appreciated that there was none, to support a finding of conspiracy between the operators and the miners, it could be only upon such evidence that the declarations of the operators could properly be received in evidence. Such declarations, however, were admitted without any basis for them and were retained in the record despite the motion to strike out.

(b) *Speeches by miners at the joint conference debates*:

The defendants in error have made much of the statement of Mr. Thomas L. Lewis at the conference in 1901 (*id.*, p. 2356):

"Now let us see how much farther this movement must go to be successful. As I understand it, it is for the purpose of wiping out competition between us as miners first, viewing it from our side of the question; next for the purpose of wiping out competition as between the operators in these four states. When we have succeeded in that and we have perfected an organization on both sides of this

> question then, if I understand the real purpose of this outside of this competitive field, who will do anything in any way endangering the peace that exists between us. What is necessary to do this? Organize our forces in the competing fields so far as the United Mine Workers are concerned. Go into these outside competing fields and tell your competitors that they have to join this movement whether they like it or not to give stability to the coal business of the United States."

Not only does this statement not refer to any unlawful means, but it is also clear that it furnishes no ground for a claim of interference by the Union with interstate commerce. This is manifest by the explicit statement of what it was proposed that the miners should do, viz.: "Organize our forces in the competing fields so far as the United Mine Workers are concerned." With respect to the Union, it meant nothing but the extension of membership by the organization in local unions of miners engaged in producing coal. As we show below (*post*, pp. 140-143), there was no basis for any finding of conspiracy or combination between the operators and the miners, and the language quoted above as to the operators was nothing but an exhortation natural in a speech of this sort.

The argument of the operators that they were unable to grant or maintain the scale demand urged by the miners was usually met by the representatives of the miners in one of two ways. Sometimes the spokesmen for the miners would belittle the West Virginia competition. At other times they would urge that if West Virginia was not organized, the miners were not responsible for that; they had done their best to secure this

organization. The following extracts from the debates which were read into the record illustrate the attitude of the miners toward the West Virginia argument of the operators and completely negative any idea of a combination in restraint of interstate trade and commerce.

In the joint conference of 1904, Mr. Mitchell belittled the West Virginia competition. He said (*id.*, pp. 1067-1068):

> "Mr. Robbins has spoken of reduction in the Meyersdale Field of Pennsylvania, and of proposed reductions in the Fairmount region of West Virginia. I cannot agree that coal is being mined in the Meyersdale field for 55 cents a ton. It is true that the operators there are making a rate of 55 cents a ton but it is just as true that the miners are resisting, and they are right. Every year that we have met in these conventions we have heard the statement made that the reason the operators represented here could not comply with the scale of wages proposed with the miners was the fact that they were meeting an unfair competition from the Fairmount District of West Virginia. And now it is said that the Fairmount operators propose a reduction of 25 cents a ton. Why that is more than the operators told us they got altogether. Why do the operators of the Fairmount District propose to reduce the rate of mining 25 cents a ton? Why, even, do they talk about it? Is it because of competition from Pittsburg, Ohio, Indiana or Illinois? Against whom do they sell their coal? In competition with whom is their coal sold? Not with Meyersdale. I see that over a million tons of West Virginia coal, a considerable part from the Fairmount Field, went to Chicago last year. Certainly if trade conditions are such that reductions must be made, it is not because they believe that they

have no advantage over their competitors in the Pittsburg District or other parts of this competitive field."

* * * * * *

"We know that outside of the state of Ohio and the Pittsburg District of Pennsylvania, practically all the coal mined in the United States is weighed and paid for upon a run-of-mine basis; and we expect to continue to demand a run-of-mine basis until we get it. We expect to keep everlasting at it until we succeed. We favor run-of-mine because we believe it to be the only honest method of weighing and paying for the product of the miners' labor. We don't believe that it injures you. We don't believe it causes any one to suffer. And what cannot give you any unfair advantage, and what will not injure us, and that will not injure the public, is certainly a thing that we can with justice insist upon securing."

Mr. W. B. Wilson, then secretary-treasurer of the miners' organization, also said at that conference (*id.*, p. 1070):

"We are told that the competition from West Virginia is so great that Ohio operators are not able to sell their coal in competition with it; that the Pittsburg, Indiana, and Illinois operators are affected by the competition from West Virginia coal; and in order to meet that competition we are asked to accept a reduction in the central competitive coal field. Mr. Robbins has already told us that West Virginia operators are asking their miners to accept a reduction in order to meet a reduction from central competitive coal field. Where does the miner come in in a proposition of that kind? He is between the upper and the nether mill stone, and is being ground between them."

Mr. Dolan, in behalf of the miners, argued that if the operators wanted West Virginia organized, it would not be difficult for the operators to achieve this. He said (*id.*, p. 1071):

> "Our friend, Mr. Chapman, says if we are good citizens we will accept this reduction because we cannot control some fellows in West Virginia and Kentucky. Why don't Mr. Chapman and his associates who have more influence than we have try to control some of the operators who are making the bad citizens in this country? The coal operators can make presidents, senators and congressmen, they can make (any) anything they want only control those fellows that cut the price in the markets. They can do this if they want to. I have nothing more to say, only to make this point. I have said all I can previous to this time. Low wages, low prices for coal have never done any good for the operators and they haven't done any good for the miners and they haven't done any good for the business people of America. It has never made good citizens, on the contrary it has made bad ones, and we don't see any reason why we should be reduced."

In the 1906 conference, Mr. Haskins, representing the miners, said (*id.*, p. 1076):

> "At different places in Ohio it is no wonder the West Virginia coal is being sold, when the very gentlemen who complain so bitterly of the competition from West Virginia are responsible primarily for the introduction of the West Virginia coal into the Ohio markets when they were trying to compel the Ohio miners to accept reductions in their wages. No one is more interested, I believe, than the Ohio miners in doing what they can to contribute to the permanency and success of this interstate movement. I am sure it is not our

desire to return to the conditions which prevailed in 1894, 1895, 1896 and 1897. I am sure of another thing, and that is that the miners are not going to be responsible for a condition of that kind. It does seem to me, however, that the argument made by the gentlemen from Ohio, favoring a reduction of wages, together with the other proposition he submitted, is for just one purpose. It seems to me his aim to at least suggest or propose something that will have the effect of disrupting this movement."

In the 1910 conference, Mr. Feehan, representing the miners, said (*id.*, p. 1095):

"We are unwilling that the non-union operators and miners of West Virginia or of any other coal field shall set the standard of prices and the standard of living for the intelligent operators and miners engaged in the mining industry in the states that are represented here. I believe that is the honest opinion of all of the operators who are present. It is unnecessary for me to refer to the fact that many of the operators who are represented here in this joint conference have interests in West Virginia and in other non-union coal fields whose products are going into the markets they are complaining of. It is true that they have contributed, with the other operators who are engaged in the industry in those states and districts, to keep the organization from obtaining a hold or becoming a factor in the industry in those fields of which they complain. If they will withdraw their objections to the establishment of the organization in those fields, I am sure they would not be confronted with those conditions, and we would be able to remove the evil in a very brief time. The practices resorted to by the non-union operators of West Virginia are un-American. If our or-

ganization were to adopt the anarchistic methods of the non-union operators, there would be a howl from the American public and we would be branded as an organization of Molly Maguires. We are not going to do that. It has not been our practice in the past, and we are not going to resort to the methods and practices the operators have been guilty of in those non-union fields to prevent organization among the mine workers."

Mr. McCullough, another miner, gave his views of the alleged West Virginia competition as follows (*id.*, pp. 1099-1100):

"I listened the other day to the reading of the bill of rights as presented by the floor manager of the operators, Mr. Maurer. It was a beautifully prepared statement, and I listened to it with great attention; but when he came to the last final appeal to the miners, it was, 'Place us on a competitive basis with the miners of West Virginia.' What does that mean? I believe the gentlemen from the other side of the house presented that with the same insincerity they believe we presented our demands. I wonder if any one believes that by reducing the price of mining and coming on a competitive basis with the operators and miners of West Virginia, it would eliminate competition. No, my friends, the competition then would become more keen than it ever has been in the past, but it would be along another line. It would come then to this point and resolve itself to this proposition: That there would be a competitive struggle with the miners and the operators of the United States as to who could reach the level of the beast first. As we would go down in the wage scale, our environments would naturally have to change to meet the change in conditions. The little fourteen by sixteen houses some of us live in would be

made smaller, the cracks in them would become larger, the conditions of employment would become worse, and as the industrial environment of the working class would become worse; men would become that much nearer the level of the beast. We would go down, down, and there would be a fierce struggle to see who could produce coal the cheapest. If the miners of West Virginia could produce it cheaper we would be forced in self-preservation to go over the river and produce coal there. The operators would have to go into the same struggle. They would have to give up their beautiful mansions, their fine roadsters, their yachts, give up their luxuries, dispense with their high living, they would have to take their daughters and sons out of college, they would have to give up their social functions, put themselves on the level of the miners and give their coal to this grand and glorious public we talk so much about, for nothing.

"I do not believe the operators would compete along those lines, and I do not believe the miners would permit them to do so. We believe in doing all we can to rectify the wrongs that now exist between the different coal competing states. We believe in the operators in Virginia bringing up the standard of the miners there. If the operators would put their shoulders to the wheel and do what they could to make it possible for us to go over there and talk to them we might be able to do something with them. You may say, 'Oh, you may say we can do that now.' Are you not all members of the great political parties which control the politics of West Virginia? How many of you have appealed through the press of the country against the outrageous assaults and murders of our men? I have never seen a protest coming from you men in regard to the conduct of the operators in West Virginia when they hire men to kill

> our people, and where the lawmakers and the law executors of that state sit by and say nothing of the assaults and murders. If you men did half as much as we have done toward organizing West Virginia and making conditions better, I believe there would be a change in the coal industry of this country. But we are not going to compete the way your proposition presents itself; we are going to compete along those lines until first you have wiped out every vestige of organization there is in this country, and then we are not going to do it. If it were done, from the ashes of the organization you destroyed, would arise another organization more compact and powerful that would resist any such thing as that."

President Lewis said at the same convention (*id.*, pp. 1100-1101):

> "During our deliberations on the question of conceding to the mine workers an advance in wage the operators' strongest argument was their inability to pay an advance because of the alleged competition from certain sections of West Virginia. Our answer to that argument has been that it was not competition from West Virginia that caused the low selling price of coal in the districts represented in this meeting. Our arguments and our statements have been that because of the competition among the gentlemen who are in this convention the selling price of coal is as low as they claim. We have challenged the operators to refute that statement, and up to this time they have not been able to successfully do so."

In the 1912 conference, Vice-President Hayes referred to the non-union mines of West Virginia as follows (*id.*, p. 1109):

> "The miners of the non-union fields of West Virginia and the South are not working as steadily as they might be. Competition down there is very strong among those non-union operators. They cannot always ship their coal in the markets of you men because of their geographical location, prohibitive freight rates and other reasons, and in making a scale all these factors ought to be taken into consideration."

At the same conference, Vice-President Hayes also said (*id.*, p. 1120):

> "Mr. Penna referred to my report on the West Virginia situation. (Evey) though we organized the miners of West Virginia we could not establish there a scale of wages that would be prohibitive, that would prevent the West Virginia operators from marketing their product. They occupy a peculiar location. They are far from the markets. Continued harping on them that we want to organize West Virginia miners to allow the operators in the Central Competitive Field to have all the markets is a wrong theory, and a theory that this organization, both miners and operators, ought to do all in their power to change. That is one reason why there is so much opposition, I believe, to the organization going into that field. The basis upon which this joint movement is founded is the basis of relations between miners and operators to establish competitive wage scales, in order that every union miner will have a chance to work and in order that they will all have a part of the work."

These extracts from the speeches of miners at the joint conference debates show in its true light the nature of the joint conferences. The representatives of the miners were appointed by their

constituents to secure the adoption of a wage scale. They had no other authority than this. They argued for the rights of their constituents in accordance with their convictions. To some miners the West Virginia competition was not a serious thing. To others it appeared to be of more consequence, but the miners were not responsible for the conditions in West Virginia, and they saw no reason on that account for lowering their scale demands. Far from showing a combination between operators and miners, the debates show conclusively that there was constant friction and opposition between them—the subject of West Virginia competition being merely an argument to be advanced by one side and to be met by the other.

It is to be noted that the above joint conference proceedings were held between operators and miners in the central competitive field and related almost entirely to the alleged unfair competition from West Virginia. Plaintiffs' mines were situated in Arkansas, a district which had been thoroughly organized by the Union as far back as 1903. There is no evidence that either operators or miners were apprehensive of non-union competition from the Arkansas district. Nor is there any evidence in the record that in the joint conference proceedings between the operators and miners of the Southwestern field, where plaintiffs' mines are located, the subject of non-union coal was ever discussed. (See testimony of Johnson, *id.*, p. 2674; Jenkins, p. 2649; Hogan, p. 2554; McAlpine, p. 2556; Reed, p. 2559; Finney, p. 2561; Allen, p. 2562).

2. *Proceedings at miners' conventions.*

The second subdivision of the evidence introduced by plaintiffs to prove the alleged combination in restraint of interstate commerce consists of extracts culled from the reports of the proceedings of the various conventions of the United Mine Workers of America. They comprise reports of officers to the conventions, speeches of delegates, reports and resolutions of committees. These various extracts will be briefly considered:

Reports of officers:

From the report of President Mitchell to the Convention of 1904, the following extract was culled (*id.*, p. 525):

> "As demonstrated in a preceding section of this report, our organization has increased in numbers, has expanded in influence, and has grown to magnificent proportions. It is now, by overwhelming numbers, the strongest single trade union that exists or ever has existed in the history of the world; but, notwithstanding our great strength, there are still an army of our fellow workers who, for reasons best known to themselves, have refrained from affiliating with us, and while we have done well in the past, we still have much work to do in the future. Personally I shall not rest content until every man employed in the production of coal bears allegiance to the United Mine Workers of America; I shall not be satisfied—and I hope that you will not be satisfied—until the coal operators and the coal miners of the entire continent enter into such contractual relations as will insure peace and prosperity to all parties directly dependent upon the coal industry and safeguard the public interest against the inconvenience, dis-

comfort, and loss which result from the interruption of business following strikes and lockouts. Until this time comes, let us not be idle. Let us agitate and educate; let us organize and federate. Let the watchword be, Onward! Keeping everlastingly at it brings success!"

From President Mitchell's report to the convention of 1905, the following (*id.*, p. 569):

"For many years special efforts have been made and enormous sums of money have been expended to organize the miners of West Virginia. Two years ago we succeeded in making an agreement with the operators in the Kanawha field. Last spring this agreement was extended so as to include the operators and miners in the Cabin Creek district. It was well understood when the agreement was made—and the records of the convention confirm the understanding—that all men employed in or around the mines were to become members of our organization and a (stipulated) amount for dues was to be deducted monthly from their earnings."

The following is from the report of Vice-President T. L. Lewis of the convention of 1905 (*id.*, pp. 525-526):

"This Organization cannot remain stationary as long as there are any mining districts unorganized or as long as there are any wrongs to be righted. If we cannot go on then we will be compelled to go back and out of existence to make way for some other organization to accomplish what we have failed to do. But I am of the opinion that we can and will go forward until we have firmly established every principle named in the preamble to our constitution."

President Mitchell reported to the convention in 1908, as follows (*id.*, p. 526):

> "On the whole it is obvious that the organization is in better condition numerically than at any previous time in its history; but while we have manifest reasons to feel proud of the success of our efforts, there are still discouraging features which should receive from this convention the most diligent inquiry and serious consideration. I refer to the failure of our efforts to organize fully the miners of Virginia, West Virginia, Maryland, several sections in the southern states, the Meyersdale, Connellsville, and Irwin fields of Pennsylvania, and the (southern) portion of Colorado.
>
> "While I am confident that in the not distant future the mine workers of the entire continent will enroll themselves as members of our union and thus receive the protection and enjoy the benefits which have been secured for their organized fellow workers, I believe, nevertheless, that to bring about this result will necessitate the expenditure of much money and probably the inauguration of some policy different from that pursued up to this time."

In 1914, Vice-President Hayes reported to the convention under the heading "Campaign in Non-Union Fields" (*id.*, pp. 530-531):

> "In compliance with the oft repeated desires of our members, we have, during the past two years, waged a vigorous campaign in the non-union fields. The organization of the non-union fields is one of our chief tasks and the (culmination) of the campaign we have started must and will result in the complete organization of the coal mining industry of the land. We must never rest content until this goal is achieved. Our chief hope

of future preferment, better wages and better conditions depends upon our success in the organization of these fields. I am firmly convinced that every non-union field in the country can be organized and with the proper sort of financial support from our membership, because it takes considerable money to wage these campaigns, I am satisfied we can take one non-union field after the other and add them to our movement. When we first started out on this endeavor, we conceived the idea that it was necessary to sow the seed before we could reap the harvest, and in line with this thought we immediately began to establish branch offices in all the non-union mining fields of the country, and in these offices we placed trusted and experienced men who could mingle among the unorganized miners and explain to them the advantages and ideals of our union. Our representatives in these branch offices are also distributing a large amount of literature each week, bearing upon the necessity of organization and the value of the same. These branch offices have also given our movement a certain standing in all the unorganized fields and our office representatives have quietly organized and educated thousands of mine workers. As evidence of the successful organizing campaign we have waged during the past two years, I wish to say that two new Districts were formed and 530 new local unions were organized. All through the unorganized fields the mine workers are anxious to enlist in our union and are constantly appealing to us to wage a strike, if necessary, in order that their desires might be realized. Before strikes are declared, however, we always make every endeavor to effect peaceful settlements, inviting the operators to meet with us in joint conference, and appealing to them, as business men, not to spend millions of dollars in fighting an organization that is

here to stay and whose members will never rest content until every miner on this North American continent is enrolled under the banner of the United Mine Workers of America."

Addresses by officers:

From the Farewell Address of President Mitchell to the Miners' Convention in 1908 (*id.*, pp. 580-581):

> "Let me remind you now that strong and powerful as your organization is, it is not yet a Gibraltar. The old saying that no chain is stronger than its weakest link holds good in this union. The strength of your union is not its best organized districts. Unfortunately —and I say it regretfully—its strength is its least strongly organized fields. You cannot be permanently safe, you cannot rest in security until West Virginia, the Irwin field, the Connellsville and the Meyersdale regions of Pennsylvania are organized. You men of the mountains of the West are not secure until southern Colorado is organized. It may cost money, it may cost sacrifice, but, gentlemen, sleep not until those men and those districts are enrolled in your union!"

Report of Committee:

The report of a Special Committee on Organization, January 28, 1902, to the officers and members of the 13th Annual Convention of United Mine Workers of America, contains the following (*id.*, p. 542):

> "We, your Special Committee, appointed to formulate a policy which would culminate in a complete organization of all the competitive fields, are fully convinced that the two Virginias have been a menace to the perfection of our organization.

"Therefore we recommend that the National Executive Board pursue the most aggressive policy that they, in conjunction with the several District Presidents, can pursue to bring about organization in the different Districts, not only in Virginia but in all other Districts."

Resolutions of local unions:

In 1904, Local Union No. 31 of Craig, Indian Territory, in District 21, in compliance with an order from the convention to send delegates to Indianapolis (*id.*, p. 567), in lieu thereof forwarded a resolution which was adopted by the convention and which contained the following (*id.*, pp. 568-569):

"Resolved, That we, the members of L. U. No. 31 of Craig, Ind. Ter., in body assembled, on this the 22nd day of December, 1903, do approve and endorse the action of our National Officers and firmly believe that the best interests of the craft will be furthered by a continuance of the same. With hearty approval we offer our sincere thanks for their work of the past and pray that a wise Providence guide them to successful ends in the future; and be it further

"Resolved, That we entirely approve of the action of our National Officers in sending organizers to spread the propaganda of the United Mine Workers of America to countries on the outside of our national jurisdiction; and be it further

"Resolved, That we approve of the National Board using the funds of the U. M. W. of A. in spreading the teachings of our craft, and conclude that the benefits derived will justify the outlay of funds; and be it further

"Resolved, That in strict compliance with our obligations and teaching we accord a

hearty approval to our National Board on its action in regard to District No. 15, strike, now on, in Colorado, and whatever action taken by the National that in their judgment is necessary to the successful ending in the elevating of the craft in District No. 15 meets our entire approval, for which we pledge our unqualified support, as our knowledge of the field of southern Colorado in the event of an unsuccessful issue of the trouble now pending would work almost unsurmountable and incalculable damage to District No. 21, as it would be an unjust competitor in the same commercial field and could with very little effort undersell and supersede us in the Oklahoma and southwestern Kansas markets. We, as a body, recommend that our National Officers take some action in regard to State and National legislation for the safety and welfare, health and comfort of our craft;"

"RESOLVED, That The National recommend to the several districts to take definite action and place the same restriction on miners of coal in strip pits, bank robbers, or coal mined in any manner that is placed in competition with coal mined by United Mine Workers."

In 1906, the following resolution from Local Union No. 230, District 22, was sent in to the convention by Local Union No. 230, District No. 22 and concurred in by the convention (*id.*, p. 576):

"Whereas, Owing to the southern part of Wyoming being entirely unorganized, and this fact greatly affecting the conditions of the organized camps in the northern part of the State.

"Resolved, That we request the national board to immediately take up the matter of organizing the coal camps along the U. P. R. R. in Wyoming; and, be it further

"Resolved, That we request the national board to immediately take up the matter of organizing the coal camps along the U. P. R. R. in Wyoming; and, be it further

"Resolved, That we are in favor of strict enforcement of the Chinese exclusion act."

In 1914, three local unions at Castle Shannon, Pennsylvania, sent in a resolution, which was adopted, to this effect (*id.*, p. 532):

"Resolved, That we indorse the policy of the International Executive Board for prosecuting an aggressive campaign in the unorganized districts and advise that the campaigns be continued until all the miners of the country are enrolled in the membership of the United Mine Workers of America."

Also in 1914, the convention concurred in the following resolution addressed to the convention by District No. 23, Southwestern Kentucky (*id.*, p. 619):

"Whereas, the members of our union, District 23, Southwestern Kentucky, being in direct competition with the non-union fields, Hopkins and adjoining counties, and who have had a bitter struggle for fifteen years to maintain and keep our organization in District No. 23; therefore be it

"Resolved, That the International Convention now assembled assist us in organizing Hopkins and adjoining counties, both morally and financially, at the earliest possible date."

The following resolution which was sent to the convention on behalf of Sub-district 1 of District 12, in 1912 and which was referred to the National Executive Board, was also read in evidence by plaintiffs (*id.*, p. 538):

"Whereas, The miners of Virginia and Kentucky in the past have been a detriment to the organization in other States by their not being organized; therefore, be it

"Resolved, That our National organization shall use its power in all forms to bring these miners into the organization.

"Passed by Sub-District 1 of District 12, and endorsed by all the Locals in said Sub-District."

Speeches by delegates:

Delegate Green, at the 1907 Convention, said (*id.*, p. 577):

"Now, something must be done; it is absolutely necessary to protect us against the competition that comes from the unorganized fields east of us. I believe a National movement would have induced West Virginia to become organized, and that, like other districts in 1897, it would have meant the organizing of that field. That would have brought us the protection we so richly deserve, and that is so absolutely necessary for us to have."

In the 1909 Convention, the same delegate said (*id.*, p. 581):

"Yet I feel that there is need of inaugurating a great movement, a special movement, to extend our organization into the unorganized fields covered by this resolution, as well as into the unorganized districts of West Virginia. This is particularly important to Ohio because of the peculiar position she occupies between the unorganized districts of Pennsylvania and West Virginia on the south and east. We feel very keenly the effects of the unorganized conditions there."

Delegate Haggerty, in the same Convention, said (*id.*, 582):

> "Central Pennsylvania last year passed a resolution asking that International organizers be appointed and placed in the adjoining fields that are in direct competition with us and are threatening our homes and moving in the direction of the organized fields. That request was denied by the International Executive Board and by President Lewis. I want to say in support of President Feehan's resolution that it ought to go farther. There are a hundred thousand men in the bituminous mines of Pennsylvania that are not allied with this movement. There are, Mr. Chairman, in the neighborhood of fifty thousand miners in District 17 that are on the outside of this movement east of the Ohio river. The great bulk of the coal mined by those mines comes in direct competition with the fields of Central Pennsylvania. This resolution is an important one. Take the Fairmount fields of West Virginia, and there is not a single, solitary local union, with the exception of one small one located at Cannelton in that field. There is not a single, solitary local union in the Meyersdale field, there is not an organization existing anywhere in the part of Pennsylvania that surrounds the Central district. Those fields are in direct competition with us. The money of this organization should be spent in the non-union districts in order to protect the districts where an organization has been established and wage contracts made. Why is it that there are over seventy International organizers, and yet few of them working in the non-union districts, but are stationed, and have been for the past year, in such fields as Central Pennsylvania?"

Delegate Farley said (*id.*, p. 583):

> "I want the delegates here to take home to their different locals this statement, and I want when these proceedings are printed that they be read in the local unions, so the men all over the United States will understand the problem that confronts this body in trying to organize the miners in a Southern State. Something will have to be done in Alabama sooner or later if Kentucky and Tennessee are to be protected, because if Alabama goes down so will all the states south of the Ohio River."

The above extracts were all introduced in evidence by defendants in error. Other passages showing the purposes of the Union in extending its organization were introduced by plaintiffs-in-error. As those are less favorable to the contentions of defendants-in-error than the above, we have deemed it unnecessary to introduce them, as the only relevance is with respect to the existence of any proper basis, which we deny, for the argument of the defendants-in-error. The extracts to which we refer may be found in the transcript from pages 1044 to 1064.

3. *United Mine Workers Journal:*

The third subdivision of the evidence which defendants-in-error introduced to prove the alleged combination consists of articles and editorials appearing in the *United Mine Workers Journal*, setting forth the hopes and aspirations of the Union.

In 1910, the *United Mine Workers Journal* published the following article (*id.*, pp. 596, 597):

> "For the first time in the history of the coal mining industry in this country, two men,

one representing the operators and the other the miners, have been clothed with authority to arrive at an agreement over the new wage scale which has been troubling the operators and miners of the Southwest, and as a result of which there are now about 30,000 idle miners in the district tributary to Kansas City.

"The two-man committee is composed of Thomas L. Lewis, President of the United Mine Workers of America, and James Elliot, representing the Coal Operators of the Southwest. Authority for these men to arrive at an agreement was given by the conference committees a week ago."

"Unionization At Stake . . . There are several points at issue which will require much consideration by these two men. One is the wage question and the other the working conditions at the mines. The operators now claim that if the scale adopted here, together with the adoption of the same working conditions that many of them would be compelled to close their mines because of the competition from the Illinois fields. The operators here have to compete with the oil and gas producers, and the Illinois operators have no such competition.

"Mining Expense Large.

"This compels the Southwestern operators to sell a part of their coal at a figure practically below the cost of mining, because the expenses of mining and distribution, as well as the other expenses, must be secured from the profit on the sale of the other coal. This must be sold so as to compete with the Eastern coal. The expense of mining coal in this district is said to be much larger than in Illinois because of the difference in thickness of the coal veins. The timbering and other mining necessary to get the coal from the ground."

In 1911, an editorial was printed, addressed to "The Twenty-second Annual Convention," which contains this paragraph (*id.*, p. 527):

> "The organization is twenty-one years of age. With this convention it reaches its full grown age, but not its stature. There are new fields to win; there are new worlds (unorganized) to conquer. The mission is not complete, nor will it be until we claim as members of the U. M. W. of A. every coal miner in the United States and Canada."

In 1912, the Journal published a communication from Adolph Germer, entitled "Our Duty, to Help West Virginia" (*id.*, p. 615):

> "West Virginia has always been the barrier to our progress, a dagger in the heart of the United Mine Workers of America, by its unorganized condition.
>
> "In every interstate joint conference between the Miner and Mine Owners the latter have raised West Virginia as the battle cry against our demands. The vast amount of non-union coal that is mined for practically nothing in that state has made inroads in the markets that rightfully belong to the central field to such an extent that we have reached the limit of our progress in the way of higher wages and better conditions. The east must be brought up! And if there ever was a time to withdraw that dagger from our hearts and forever wipe out that cry of "Cheap Coal" from West Virginia, that time is now."

Other articles from the United Mine Workers Journal which were read in evidence by the plaintiffs in error may be found in the record (*id.*, pp. 1123-1134).

The above represents the substance of the evidence introduced by plaintiffs to prove the alleged combination in restraint of interstate trade. The extracts submitted and the testimony of the single operator called by plaintiffs show merely that plaintiffs desired to extend their organization into the non-union fields and that one of their motives in so doing was to protect their own miners against the cheap labor existing outside of union territory.

There was an abortive attempt upon the part of plaintiffs to show by articles in the United Mine Workers Journal that defendants in a number of instances had countenanced the use of violence in connection with disputes between the Union and mine owners. Such evidence was very properly ruled out by the Trial Court and the case was not submitted to the jury upon any such theory (*id.*, pp. 621-645).

3. The destruction of plaintiffs' property.

While, in our view, the question of the destruction of property was not one presenting any issue cognizable under the Sherman anti-trust act and hence within the jurisdiction of the court, as there was no evidence of any combination or conspiracy in restraint of interstate trade, we shall endeavor to set forth the substance of the evidence so far as the matter of destruction of property is concerned.

By reason of the peculiar and, we submit, wholly unjustifiable practice of permitting plaintiffs to join in one action under the Sherman Anti-Trust Act several distinct plaintiffs with their separate causes of action, plaintiffs have been

able to create the impression that the circumstances under which the various properties were destroyed are the same in each case. This, however, is not the fact.

There are four mines involved. Prairie Creek Mines Nos. 3 and 4 (operated as one mine); Mammoth Vein Mine No. 1, Coronado Mine, and the Dallas Mine belonging to the Hartford Coal Company.

The buildings at the Prairie Creek and Mammoth Vein Mines were burned on July 17, 1914, following a battle with the armed guards at Prairie Creek Mine No. 4. The fire at the Dallas or Hartford mine occurred at about 1 o'clock Sunday morning, July 19, 1914 (*Rec.* 1804). The buildings at the Coronado mine were burned on July 20, 1914 (*id.*, p. 1920). The evidence as to the fires at each of these mines differs widely and they should be considered separately.

A. *Destruction of property at Prairie Creek Mines Nos. 3 and 4.* The principal owner of the stock of the corporations named in the complaint and the Manager of all the mines involved was Franklin Bache. He had represented the three operating companies, Prairie Creek Coal Mining Company, Mammoth Vein Coal Company and Coronado Coal Mining Company, at the joint conference between the Southwestern Coal Operators Association and the United Mine Workers of America District 21, in 1912, when a joint scale agreement between the Union and the Operators' Association was made (*id.*, p. 948). This agreement obligated the three companies to operate their mines upon a Union basis. It did not expire until July 31, 1914 (Exhibit 12, *id.*, pp. 918-947).

In the latter part of March, however, notwithstanding this contract, Mr. Bache determined to break off relations with the Union as far as the Mammoth Vein and Prairie Creek Mines were concerned (*id.*, p. 682). For purposes of his own he requested his Superintendent, Cameron, to send him a letter setting forth the advantages of operating the mines as non-union mines. The substance of the letter, although it purported to come from Cameron, was dictated by Bache (*id.*, 2522). It recites that due to the increase in wages that had been forced by the Union and various other restrictions, the cost of production of coal at the time equalled or exceeded the gross revenue per ton realized by the sale of the coal and contains the following recommendation (*id.*, pp. 719, 721):

> "I am firmly of the opinion that a continuation of business relations with them" (the unions) "means a strengthening of their power over us, if that is possible and to remedy these evils it seems evident to me that the first thing necessary is to rid the management of the interference of the local unions through their picked committees, or, in other words, to operate the mines on a non-union basis.
>
> "To do this means a bitter fight but in my opinion it can be accomplished by proper organization. * * *"

The letter then stated the savings which, it is said, could be achieved by running the mines non-union and concludes:

> "I know you appreciate the fact that the success of this plan means the utter annihilation of the union so far as our mines are concerned but with this accomplished I see noth-

ing in the way of realizing the above results." (*id.*, p. 721.)

Mr. Bache, however, appreciated that his contract with the Union did not expire until July 31, 1914. He therefore adopted the expedient of having one of his companies, the Mammoth Vein Coal Mining Company, with a capital stock of $100, all of which was held by the Mammoth Vein Coal Company (*id.*, pp. 947, 948), enter into a contract with the Mammoth Vein Coal Company and the Prairie Coal Mining Company for the operation of their mines (see complaint, Par. 23; *id.*, p. 192, 193). On March 28, the men working at the Mammoth Vein and Prairie Creek mines were paid off and the mines closed down (*id.*, p. 685). Notices were sent out to vacate the company's houses (*id.*, pp. 722, 723). There was no strike at these mines. Bache himself testified at one time to this effect (*id.*, p. 949). Having thus closed down the Mammoth Vein and Prairie Creek mines, Mr. Bache undertook through the Mammoth Vein Coal Mining Company to run mine No. 4 of the Prairie Creek Company as a non-union mine (*id.*, p. 682).

This mine was located about one-quarter of a mile from the road leading from Hartford to Midland (*id.*, p. 3378), Midland being about three and a quarter to four miles (*id.*, p. 1790) north (*id.*, p. 1388) and Hartford about three miles to the southwest. Huntington is situated about five miles a little to the northeast of Mine No. 4. Nearer to the mine are Prairie Creek, about one-quarter of a mile away (*id.*, p. 1414) and Frogtown about one and a half miles (*id.*, p. 1861) distant. All these places are small mining towns located in Sebastian County, Arkansas, practically all the miners being members of local unions.

Prairie Creek Mine No. 3 is located about half a mile from Mine No. 4. It had been abandoned some years before so far as the shipment of coal was concerned and the coal from this mine was taken out from Mine No. 4, where a tipple and other buildings had been erected (*id.*, p. 666).

Mr. Bache prepared to open Mine No. 4 as a non-union mine as follows: He arranged with the W. J. Burns Detective Agency to send on "four or five reliable men" (*id.*, p. 863), purchased for them rifles and cartridges (*id.*, pp. 686, 687), placed a rope about the property and erected at intervals electric lights with reflectors throwing the light outside of the enclosure. Later the number of rifles was increased to 60 or 70 and several thousand rounds of ammunition were added (*id.*, p. 693). The opening of the mine as an "open shop" mine was set for Saturday, April 4, 1914 (*id.*, p. 683). On April 6, miners and citizens from the surrounding towns including Hartford, Midland and Huntington, (*id.*, p. 1722) headed by a band assembled at a school house near the mine. There were speeches protesting against the action of the Company (*id.*, p. 1721), and a committee appointed to confer with the superintendent (*id.*, p. 1722). The crowd refused to wait, however, for the report of the committee and moved over to the mine in a body and there conducted a demonstration (*id.*, pp. 1152-1160). Some of the guards and employees at the mines were attacked by the crowd and badly beaten up (*id.*, p. 1158). A banner was hoisted over the tipple with the slogan "This is a union man's country." Between April 6 and July 17, there was no trespass upon plaintiffs' property. At the same time, there was evidence of isolated insults and occasional intimida-

tion of non-union employees, especially when they were brought in on trains (*id.*, pp. 1256, 1319-1320, 1321, 1322, 1430-1431), the evidence showing that Bache went as far as Tennessee to secure non-union men (*id.*, pp. 1261, 1280, 1301, 1332, 1392).

On the other hand, there was also evidence showing that during this period some of the armed guards had insulted girls of the neighborhood (*id.*, pp. 2579-2587, 2607, 2615); that they had frequently shot off their guns to the terror of a nearby farmer and his family (*id.*, pp. 2663, 2683, 2654); that another farmer who lived at the foot of a bluff was forced to move his family into a shed belonging to a neighbor, because the guards rolled stones down the bluff towards his house (*id.*, pp. 2662-2663), and a blacksmith testified that a guard drew a gun on him when he was driving along a public road (*id.*, pp. 2803-2804). A photographer was held up and compelled to open his bag. As it only contained pictures, however, the guards left him alone, one of them saying, "Come on, Jim, that fellow is all right. He ain't one of them union sons of bitches." (*id.*, pp. 2794-2795).

On Sunday night, July 12, some persons shot up the union mining camp at Frogtown. There is no doubt that the people of the community believed that the shooting was done by the guards. Many left the camp that night to go to Hartford (*id.*, pp. 2670). One miner had a son who was a cripple and he pushed a wheel chair all the way to Hartford (*id.*, pp. 2715). The school teacher at Prairie Creek testified that she and the entire family with whom she boarded betook themselves to the cellar (*id.*, p. 2806). Plaintiffs, on the other hand, claimed that the shooting up of Frogtown was merely to lay a foundation for the attack on the mines a few days later. One Jesse Goatcher testi-

fied that a union man named Cluck told him that he and another union man named Slankard had fired the shots saying "we knowed it had to be done to protect ourselves" (*id.*, p. 1460). Cluck denied this conversation and testified that at that time, he was unable to shoot a gun having been injured in an explosion in the Mammoth Vein Mine, from which he had not at that time recovered. (*id.*, p. 4621)

Rumors were prevalent that the "scabs" were about to attack other towns where miners lived. Guards were placed by the miners both in Frogtown (*id.*, p. 2796) and in Hartford (*id.*, p. 2740). Meetings were held in Hartford. Plaintiffs introduced evidence to the effect that at one of them Jim Slankard said that the non-union men had raised trouble in Beulah Camp (Frogtown) and he would lead the way to put a stop to it (*id.*, pp. 1909-1910). Plaintiffs' witness York, an ordained minister, (*id., p. 1880*) attended another meeting at which one Charlie Robinson, a union miner, spoke. He referred to the trouble between the union and non-union men at Camp Beulah and from his remarks, the witness stated that "he would judge that he wanted to go down there and clean up on them." On the night of July 16, many union men were assembled in Frogtown and they are said to have discussed "going over there and get them men out of that place." (*id.*, pp. 1545-1546)

On July 17, the storm broke. At the various mines in Hartford, Midland and Huntington, the miners did not appear for work. (*id.*, pp. 1421, 1743, 1826, 1829, 2570.) Armed men surrounded Mine No. 4 and opened fire upon the guards and employees. (*id.*, p. 1567). The latter replied with their guns for a short time, but soon beat a

hasty retreat. A number of employees were captured. Among these were John Baskins and Earl Sylesberry (id., p. 1202), who were shot. There is testimony that the unidentified person who fired the shot said as he shot Sylesberry, "I guess you will not scab any more." (*id.*, p. 1663). Someone dynamited the slope at No. 3 Mine, while others set fire to the tipple and other buildings at No. 4. There is evidence that on the following day miners were seen throwing tents, excelsior, bedding, etc., upon the fire, which destroyed some of the buildings. (*id.*, pp. 1869-1871.)

B. *Destruction of property at Mammoth Vein Mine No. 1.* This mine was about one mile from No. 4 (*id.*, p. 1773) on the farther side of the Midland-Huntington road. (See Map, *id.*, p. 3378). It was closed down on March 28, 1914, (*id.*, pp. 2631-32) pursuant to the non-union policy of Mr. Bache. There is no evidence that there was any attempt to operate this mine after that date. At the time of the fire, it was not engaged in digging coal or attemping to ship any coal in interstate commerce. The buildings at this mine were burned on July 17, the same date as the battle, the evidence showing that at about noon time on that date, four or five hundred people were on the ridge overlooking the Mammoth Vein Mine watching it burn (*id.*, pp. 1772-1773).

C. *Destruction of property at Dallas Mine.*— The fire at the Dallas or Hartford mine occurred at one o'clock Sunday morning, July 19, 1914, (*id.*, p. 1804). This mine had not been in operation for almost two years (*id.*, p. 1974). There is no evidence as to how the fire started. Plaintiffs' witness Steele, railroad agent at Hartford, testi-

fied that he was called by his roommate at one o'clock in the morning; that they walked out to the Dallas mine—about a thirty minute walk (*id.*, p. 1804), and found the engine room practically consumed and the fire burning on the timbers leading to the tipple. They immediately gave their attention to releasing cars belonging to the Midland Valley Railroad (*id.*, pp. 1804-5). Defendants' witness Clayborn testified that he was a union miner (*id.*, p. 2631) living about one hundred yards away from the Dallas mine (*id.*, p. 2632). His house was owned by the Bache-Denman Company and he was allowed to live there to look after the Dallas property (*id.*, p. 2632). He testified that he assisted Mr. Steele in putting the fire out and in moving the Midland Valley cars away (*id.*, p. 2630). He was still living in the Bache-Denman house at the time of the trial (*id.*, p. 2632). This is all the evidence there is in the record as to the burning of the engine house at the Dallas mine.

D. *Destruction of property at Coronado Mine.*—The buildings and structures at the Coronado mine were burned on July 20, 1914 (*id.*, p. 1920). There was no evidence that any union man was responsible. This mine was located three miles from No. 4 (*id.*, p. 1921) near the road leading to Huntington (*id.*, p. 2766). It had not been in operation since April 18, 1914, when the men refused to work on account of the trouble at No. 4 mine (*id.*, p. 1921). Plaintiffs' witness Willsley testified that he was the foreman at the Coronado mine (*id.*, p. 1919); that his house was about three hundred yards from the mine (*id.*, 1924); that he had been at the mine in the morning of July 20 and at

about eleven o'clock went to his house for dinner (*id.*, p. 1921). As he sat with his paper waiting for dinner, his daughter called to him that the tipple was on fire. He and his son immediately ran down to the tipple, calling to Will Miller and Louis Schmidt on the way (*id.*, p. 1921). Schmidt was a union miner (*id.*, p. 1923) who lived about one hundred fifty yards from the Coronado mine. They both joined Willsley and his son. Schmidt testified that Miller said to Willsley "we will put this fire out if you want us to," and he said, "No sir, let it burn. Mr. Bache will be tickled over it and it is insured" (*id.*, p. 2619). Mr. Schmidt also testified that they arrived at the tipple in time to have put out the fire and that there was a pond within fifteen steps of the tipple where they could have secured water. Miller testified to the same effect (*id.*, p. 2760). "I told him me and my father-in-law would help him put the fire out if he wanted us to help him put it out", and he said, "Mr. Bache will be tickled to hear it burn. It is well insured and he will be tickled to hear it burn." Miller also testified that there was water in a pond within thirty-five or forty steps from the tipple. One Bob Anderson reached the scene of the fire after it had gained great headway on the tipple, but had not at that time reached the boiler room. He testified that he offered his assistance to Willsley and it was refused (*id.*, p. 2766). Willsley denied that he had been offered any assistance (*id.*, p. 1926), and he stated that it would have been impossible to put out the fire by the time he reached the tipple (*id.*, p. 1922). Both he and his son testified that they could see a man's tracks showing that the man had been running (*id.*, pp. 1922-1927).

In connection with the proof as to the burning of Coronado, plaintiffs introduced evidence to the effect that guards had been placed in Huntington the night before to protect the town against scabs who, it was thought, were going to raid the town (*id.*, pp. 1929-1930). This fact undoubtedly shows that there was a genuine apprehension among the inhabitants that the guards and scabs would retaliate for the battle of July 17. Upon what theory it forms a basis for the conclusion that Coronado was burned pursuant to a conspiracy to restrain interstate commerce in coal has yet to be explained.

4. *Alleged responsibility of defendant associations for the Prairie Creek riots.*

(a) As to the responsibility of the International organization, United Mine Workers of America.

There is no evidence in the record implicating any International officer in the Prairie Creek riots. The so-called strike at plaintiffs' mines was neither called nor endorsed by the International organization (*id.*, p. 1630). It was completely under the jurisdiction of District No. 21, and the evidence is uncontradicted that the International organization exercised no jurisdiction whatever over the so-called strike (*id.*, p. 1630). The so-called strike was not financed by the International organization and the testimony of the International Secretary-Treasurer that no money was spent by the International organization in aid of the strike is uncontradicted.

The judgment against the International Association does not rest upon any evidence implicating the International officers or members, but solely upon an asserted proposition of law, that

the failure of the International organization to discipline any of the members of the local unions or of District 21 involved in the riots and their failure openly to repudiate the unlawful acts of the Arkansas miners fixes responsibility, under the Sherman Anti-Trust Act, for the burning of plaintiffs' mines upon the International Association. We submit that no support for this theory can be found in principle or in the adjudged cases under the Anti-Trust Act or in the general law of conspiracy (see Point Third, *infra*, where the evidence relied upon by plaintiffs is discussed, pp. 119-122).

(b) As to the responsibility of District No. 21:

The control of the District organization was in the hands of the District Executive Board and under the Constitution this Board had complete jurisdiction of the Prairie Creek so-called strike. It began paying strike benefits to the miners six weeks after Mr. Bache locked them out (*id.*, p. 2734) and sent one of its members, William McLachlan, to Hartford Valley in the spring of 1914, with instructions to keep the peace and respect the injunction of the District Court which had been granted after the riot of April 6th (*id.*, p. 2724). Mr. McLachlan testified he was in Hartford on July 16th and 17th, but did not know of any plan to attack plaintiff's mines (*id.*, pp. 2736-2737).

The President of District No. 21 was Mr. Pete Stewart. There is evidence that on May 25 he made a speech in front of McGee's drug-store at Midland, in which he stated that non-union employees were insulting women and girls (*id.*, p. 1312); that they were going to have another Colorado down there (*id.*, p. 1494); that any man who wanted a gun could get one the following week (*id.*, p. 1711); that he would furnish all the guns

that were needed (*id.*, p. 1494); and that he would die before he would see No. 4 mine run on an open shop basis (*id.*, 1496, 1711). There is also evidence that during the latter part of May, Stewart, in the course of the conversation with United States Deputy Marshal J. O. Johnson scorned the injunction already granted by the Court and said: "We are not going to let them dig coal—the scabs" (*id.*, pp. 1499, 1500).

Plaintiffs also offered evidence showing that Stewart had countersigned checks made out in behalf of District 21 by Fred W. Holt as Secretary-Treasurer for the purchase of rifles and ammunition from the Remington Arms Company. On the other hand, it was shown that Stewart frequently countersigned blank checks with no knowledge of the use to which they were to be placed (*id.*, p. 2747). It was clearly proved that when information came to Stewart as to the purchase of the guns and their distribution in Hartford Valley he ordered that they be gathered up. This was subsequently done and the rifles and ammunition sent back to McAlester before the battle on July 17 (*id.*, p. 2725). The bill of lading for this shipment was introduced in evidence (*id.*, p. 2593) and an attorney of McAlester, Oklahoma, testified that the guns were in that town on the day of the battle (*id.*, p. 3016).

The semi-annual report of Fred W. Holt, Secretary-Treasurer of District 21, from April 19, 1914, to September 30, 1914, produced over objection and exception by defendants in answer to order of the court, showed the expenses of District 21 for the Prairie Creek strike. It appears that the District paid legal expenses, expenses for merchandise, tents and supplies for the strikers and their families (*id.*, p. 2468). Subsequent re-

ports show that various sums of money were expended by the District in aid of the local unions at Midland and Hartford, that the District had paid for food to be given to men in jail and that James Crossley, who figured in the Prairie Creek trouble had been placed on the old age pension list.

It thus appears that as to District 21 there is evidence that the so-called strike was under the supervision of the District and that some of the District officers were implicated in the riots. But even as to District 21, the chief reliance of plaintiffs in their attempt to fix responsibility must be their alleged doctrine that the failure of the labor union officers to discipline its members for violation of the criminal law during a strike creates a liability upon the part of the Association. The liability would thus fall upon all its members regardless of suitable evidence of authorization, participation or ratification.

It should be noted that District No. 21 covered the States of Texas, Oklahoma and Arkansas, and the contention is that all the members in these States became liable through the District Association for the injuries done in the locality in question. It is clear that the constitution of District No. 21 (like that of the International Association) gave no authority to the officers, executive board, or any members of the Association to commit any of the wrongful acts alleged, and it is submitted that the evidence falls far short of any proof of ratification by the members of the District Association generally, so as to make the Association and all its members liable, even if the wrongs alleged were of a character to be susceptible of ratification.

The charge. Upon the conclusion of the evidence, the learned District Court denied defendants' motion for the direction of a verdict, handing down a memorandum opinion (*id.*, pp. 3179, 3186). The case was then given to the jury. Succinctly stated, the theory of the charge was, in substance, that if the jury should find that the International Association had formulated a policy looking to the prevention of the mining of coal by non-union employees and should also find that the same purpose dominated the individuals who destroyed plaintiff's property, the International Association would be liable for the damage caused (See *id.*, pp. 3206-3213). There was no basis in the evidence for a charge that the International Association was an unlawful organization, or that its members had authorized unlawful acts. It is apparent that the evidence justified no finding of a policy on the part of the International Association to prevent the mining of coal by non-union men, except as that result might follow the extension of the membership of the Union by the organization of local unions, a perfectly legal policy. The charge of the learned District Court (and while it is too long to quote, we trust that it may be read in its entirety) in substance instructed the jury that if the alleged injuries were inflicted in order to prevent the mining of coal by non-union men, and if this was done in pursuance of the policy of the International Association, that then all the members of that Association throughout the country, would through the Association be liable. But there was no basis in the evidence for a finding that the members of the International Association had authorized or adopted the policy of committing these wrongful acts or had authorized or rati-

fied the acts in question. Even the strike, if it can be called a strike, was not authorized by the International Association. Substantially, it was left to the jury to say that all the members of the International Association were liable, through the Association as a defendant, in the absence of evidence of authorization, participation or ratification. It is submitted that the charge was grievously prejudicial and erroneous and exception was duly taken (*id.*, pp. 3220-3221).

The charge to the jury was given on November 20, 1917 (*id.*, p. 3188). On the following day the jury came into court for further instructions (*id.*, pp. 3233-3234). From the questions of the jurors it is evident that they did not understand the Court as to the responsibility of the organization for the acts of a few individual members. The Court failed to state the rule clearly (*id.*, p. 3234). The jury again retired and on the following day the Court recalled them into the Court Room, stated that it understood that an agreement had not been reached and then delivered a supplementary charge which was practically equivalent to the direction of a verdict in favor of plaintiffs. This charge (*id.*, p. 3235, 3236) is quoted below under the specification of errors. (*See infra.*, pp. 74-76). The jury retired and brought in a verdict assessing plaintiffs' actual damages at $200,000 (*id.*, p. 3237) to which exceptions were filed as it did not apportion the recovery between the various plaintiffs. Judgment was rendered thereon for $600,000 (*id.*, p. 354) to which subsequently a counsel fee of $25,000 was added (*id.*, p. 3242).

On April 28, 1917, the judgment was affirmed by the Circuit Court of Appeals upon a majority

opinion of Sanborn and Trieber, J. J.—Hook, J. dissenting (*id.*, pp. 3437, 3438). Interest from July 17, 1914, to the date of the verdict, which had been allowed by the District Court, was, however, denied. The Court retained the case on petition for rehearing which was denied on November 15, 1919 (*id.*, p. 3450).

Specification of Errors.

1. The Circuit Court of Appeals erred in holding that suit could be brought, process issued and judgment recovered against unincorporated labor unions, either the United Mine Workers of America, or District 21, or the local unions of plaintiffs in error, in an action for damages under the Federal Anti-Trust Acts. (Assignments 1, 2, 3; Transcript, p. 3454).

2. The Circuit Court of Appeals erred in sustaining the District Court in overruling the separate demurrers of the several plaintiffs in error to the third amended complaint (Assignment 4; *id.* p. 3454).

3. The Circuit Court of Appeals erred in sustaining the District Court in overruling the separate motions of the plaintiffs in error to strike from the third amended complaint the name of each of the plaintiffs and their causes of action, said motion being made on the ground that the said plaintiffs had not a community of interest in the relief sought, and that therefore there was a misjoiner of parties plaintiff and of causes of action. (Assignments 5, 6, 7; *id.* pp. 3454, 3455).

4. The Circuit Court of Appeals erred in sustaining the orders of the District Court requiring the plaintiffs in error, labor unions and their offi-

cers, to produce certain books, writings and documents from their files for the use of the defendants in error at the trial to prove the alleged criminal conspiracy (Assignments 8, 9, 10, 11, 12; *id.* pp. 3455, 3456).

5. The Circuit Court of Appeals erred in sustaining the District Court in overruling the motions of the plaintiffs in error, the United Mine Workers of America, District No. 21 and the local unions and individuals, respectively for the direction of verdicts in their favor (Assignments 14, 15, 16 and 17; *id.* pp. 3456, 3457).

6. The Circuit Court of Appeals erred in deciding that the printed books, purporting to contain the proceedings of the joint conferences of operators and union miners, were properly authenticated and received in evidence by the District Court. (Assignment 13; *id.* p. 3456).

7. The Circuit Court of Appeals erred in refusing to reverse the judgment of the District Court for the refusal to give the written instructions to the jury which were requested by the plaintiffs in error, to-wit:

> "I instruct you that the character and purposes of the defendant associations are lawful as expressed in their constitutions; and I further instruct you that the officers of the United Mine Workers of America had no right to pervert the association to unlawful purposes, or to participate in the unlawful conduct in the name of said United Mine Workers of America, and that any such perversion of the purposes of said association, or any unlawful conduct on the part of its officers in relation to the alleged destruction of the plaintiff's property, would not bind the United Mine Workers of America, unless you further find by a fair preponderance of the evidence that the entire membership of

the said United Mine Workers of America had authorized such unlawful conduct on the part of its officers, or with full knowledge of the facts had ratified their illegal conduct before the institution of this suit." (Assignment 18; *id.* p. 3457).

"It is the law that an act which a corporation or association cannot lawfully do in the first instance cannot be ratified by its officers or agents. Such an act is incapable of ratification, and the association or corporation is not bound by any attempted ratification thereof by its officers or agents." (Assignment 19; *id.* p. 3457.)

"If you find from a fair preponderance of the evidence that the Districts and Locals are agents of the United Mine Workers of America for the purpose of conducting local strikes under their own direction, then I charge you that such strikes are presumed to be intended to be conducted by lawful means and that if in the conduct of the strike in question the powers reposed in said district and locals were perverted, and that they or any of their members or officers engaged in an unlawful conspiracy to interfere with the plaintiffs' production of and interstate commerce in coal, the United Mine Workers of America would not be liable unless its entire membership had with full knowledge of the facts and before the institution of this suit acquiesced in and ratified such unlawful perversion and illegal conspiracy, but only such members can be held responsible as the evidence may show to have participated or acquiesced in such perversion and illegal conspiracy, or to have ratified the same with full knowledge of the facts before the institution of this suit." (Assignment 20; *id.* p. 3457.)

8. The Circuit Court of Appeals erred in sustaining the District Court in the following instruction given after two days' deliberation by the jury and its announcement in open court that they could not agree on a verdict (Assignment 21; *id.* pp. 3458, 3459).

> "Now Gentlemen of the Jury, this is a pretty serious situation and I want to say to you that the Court has no thought at all of discharging you. You were sworn upon your oaths to do your duty as jurors. In the opinion of the Court there is no reason on earth why reasonable men with a due regard for right, and each having due respect and consideration for the other's opinion, should not arrive at a conclusion in this case. What would be a fortune to either of you, or I, has already been spent and a failure to render justice in this and others is what brings the courts into contempt. I say this to you that you may understand the seriousness of your situation. The facts in this case have got to be found by a jury. Another jury will have no better opportunity of knowing these facts than you, and it is your duty as jurors under your oaths to get together and return a verdict.
>
> "Now the Federal Courts recognize the right of this Court under the circumstances to say what this Court believes in relation to the facts in this case, and you are advised that this Court is of the opinion that the facts in this case, justify you in the conclusion overwhelmingly that it was the policy and therefore the agreement for years of this national organization to prevent mining of non-union coal for the unlawful purposes named in this complaint that it might not come into competion with union mined coal; that there is no question in this Court's mind but that that strike was ordered down there for that pur-

pose to prevent the mining of non-union coal in these plaintiffs' mines; that the strike was called by those who were the instrumentality of the greater organization, the general organization, the defendants, and their act was its act, and that they put into motion the force that destroyed this property, and that that force was put into motion for the purpose of preventing the mining of that coal, the shipping of that coal, the running of these mines. Why, this Court has not a thought that there would ever have been any trouble there if it had not been for the prevention of the mining of non-union coal. Now, this is the judgment of this Court and if it were my duty to decide it I would decide it here. Now you are not bound by my opinion. I have a right to give you my judgment however, you are the sole and exclusive judges of the facts and it is for you to determine these issues of fact independent of my judgment and this Court believes you ought to determine it and under your oaths as jurors agree upon a verdict.

"If there is any question about the law on the responsibility for this, responsibility of the greater organization, that is for the higher courts to say, but you cannot reach it until you have done your duty—you are the stumbling block in the way and this whole time is wasted. Now after I have said what I have, I am going to say that I have no thought of discharging you; you must return a verdict in this case. You are amply qualified to do the right thing as you see it, and as it should be done and the thought of this Court is that no other jury will ever be better prepared to render a verdict than you and to separate without a verdict will be to have rendered all this expense of all this trial for naught—make it necessary to go all over the ground again with no better opportunity on the part of the jury in the box when it has all been done, to do the right thing than you have now, no advantage

—none in the world. You see the importance of the situation and I now urge you with the idea of doing the right thing and putting this matter in that condition that a trial of the case with a legitimate end, in which the verdict of the jury will place it. And with a knowledge and feeling of responsibility and that that responsibility is with you, that you now return to your jury room and bring in a verdict."

7. The Circuit Court of Appeals erred in sustaining the District Court in overruling the motion submitted by plantiffs in error to require the jury to apportion the damages among the plaintiffs and in deciding that defendants were entitled to recover a verdict in gross sum (Assignments 22, 23, 24; *id.*, p. 3459).

POINTS.

We present the following points:

First: This Court has jurisdiction of this writ of error.

Second: The Court below erred in holding that an action could be brought, process had and judgment recovered against unincorporated labor unions, either the United Mine Workers of America, or District No. 21, or the various local unions named in the complaint, in an action under the Sherman Anti-Trust Act.

Third: Recovery against the United Mine Workers of America was entirely unwarranted by the evidence.

I.—A labor union, as such, is not within the Sherman Anti-Trust Act.

II.—The Constitution of the United Mine Workers of America is the agreement of membership. It fixes the terms upon which these miners unite and contribute to the funds which the judgment below turns over to the defendants in error. The constitution and objects of the Association are entirely lawful.

III.—The United Mine Workers of America did not authorize, participate in or ratify the alleged acts committed in Arkansas by reason of which the recovery of damages was allowed.

IV.—Notwithstanding the provisions of the Constitution of the International Association, and notwithstanding that it did not authorize, participate in or sanction either the "strike" or the alleged wrongful acts in Arkansas, liability has been predicated in the view that these acts in Arkansas were committed in carrying out the "aims, objects and purposes" of the national organization. Such a view, we submit, is wholly without warrant and is based upon a mis-construction of the policy of the Association.

FOURTH: The verdict is also unsustainable with respect to District 21.

FIFTH: The facts proved at the trial did not justify a recovery against any of the defendants under the Sherman Anti-Trust Act. There was no proof of any combination or conspiracy in restraint of interstate commerce.

SIXTH: The District Court erred in its instructions to the jury.

SEVENTH: There was a misjoinder of plaintiffs and their causes of action, the complaint failing to show any community of interest in the plaintiffs or any joint cause of action.

EIGHTH: The orders requiring the unincorporated labor unions and their officers to produce from their files, books, writings and documents for the purpose of proving the officers and members of those unions guilty of the alleged criminal conspiracy were violative of their rights under the Fourth and Fifth Amendments to the Federal Constitution.

FIRST. This court has jurisdiction of this writ of error.

The judgment of the Circuit Court of Appeals was not final (Judicial Code, Sec. 128). The action was brought under Section 7 of the Act of Congress of July 2, 1890, 26 Stat., 209. (Complaint, Transcript, p. 200.)

The cases of *Montague & Co.* v. *Lowry*, 193 U. S., 38; *Virtue* v. *Creamery Package Co.*, 227 U. S., 8; *Lawlor* v. *Loewe*, 235 U. S., 522; *Thomsen* v. *Cayser*, 243 U. S., 66; *United Copper Securities Co.* v. *Amalgamated Copper Co.*, 244 U. S., 261; *Buckeye Powder Co.* v. *DuPont de Nemours Powder Co.*, 248 U. S., 55; came to this Court on writs of error to Circuit Courts of Appeals to review judgments in actions under the same section.

There is also a pending application for a writ of *certiorari*, the consideration of which was postponed until the hearing of this writ of error. If any possible doubt could be entertained of the jurisdiction of the latter, it is submitted that the case is manifestly one for the granting of a writ of *certiorari* in view of the nature and importance of the questions involved.

SECOND. The court below erred in holding that an action could be brought, process had and judgment recovered against unincorporated labor unions, either the United Mine Workers of America, or District No. 21, or the various local unions named in the complaint, in an action under the Sherman Anti-Trust Act.

The United Mine Workers of America is an unincorporated labor union. The complaint itself so alleges (*id.* p. 183). District No. 21 and the various local unions are also unincorporated (*id.* p. 184). Nevertheless, the attempt is made in this suit, under the Sherman Anti-Trust Act, to bring these unincorporated unions into court as "persons" which can be sued and against which judgment can be recovered.

This wholly untenable theory, as we submit it is, vitiates the entire proceeding.

These unincorporated labor unions are not themselves persons or suable as such, and the members of these unions are not suable in the names of these unions. This fundamental question was presented at the threshold of the litigation and plaintiffs in error have contested the alleged right to sue these unions, and the members of the unions

in this manner, at every stage of the case. The point was raised by special appearance and motion to quash the summons (*id.* pp. 58-80); by demurrer (*id.* pp. 207-208); by written request for instruction to the jury (*id.* p. 322), and motion for judgment notwithstanding the verdict (*id.* pp. 358, 360).

As we shall later show, there is no basis in the evidence for holding the United Mine Workers of America, or the hundreds of thousands of members throughout the country, responsible for the injuries alleged. Confining ourselves, however, to the basic question as to suability, we invoke the most elementary principle of law.

If individuals commit wrongs, they are liable as individuals. No matter how many may participate in the commission of the wrong, they are still liable as individuals, and only as individuals. If instead of suing alleged wrong-doers as individuals, the attempt is made to bring a group of persons into court, it is absolutely essential that it should appear that this group constitutes a person in law. There is no such thing known to the law as suing a number of alleged wrong-doers when they have no status before the law in a corporate or *quasi* corporate capacity.

The rule is not changed because a group of persons organize themselves into an association of a voluntary unincorporated character which is not recognized by the law as a person in law. It is clearly established that the members of an unincorporated association may not be sued in the name of the association.

> *Oxley Stave Co.* v. *Coopers International Union*, 72 Fed. 695; affirmed *sub. nom.* *Hopkins* v. *Oxley Stave Co.*, 83 Fed. 912.
> *American Steel Co.* v. *Wire Drawers Union*, 90 Fed. 598.

Allis-Chalmers Co. v. *Iron Moulders,* 150 Fed. 155, 183.
Pickett v. *Walsh,* 192 Mass. 572.
Karges Furniture Co. v. *Amalgamated Wood Workers' Local Union,* 165 Ind. 421, 2 L. R. A. (N. S.) 788, and note.
See also 5 Corpus Juris 1369 and cases cited.

The existence of this rule was recognized by the Circuit Court of Appeals in the case at bar. In *Dowd* v. *United Mine Workers of America,* 235 Fed. 1, the Court said, pages 5-6:

> "It is true that, in the absence of a specific statute to the contrary, the rule at common law, and under the Codes, is that an unincorporated association is not recognized as having a legal existence apart from its members. The action lies against the members individually, but not against the unincorporated association in its collective capacity and name."

We take it then to be established beyond question that the defendants in error had no right whatever to sue these labor unions or their members in the name of these labor unions, respectively, unless they could show that these groups had received the character of persons in law.

The very essence of the action of the State in creating a corporation is that it brings into being a legal entity which can be treated as such, in suing and being sued. There is, concededly, no such legal entity here.

Plainly, it is not enough to permit individuals to be sued in the name of an unincorporated association that a group has acted together and selected representatives called officers and boards.

It is well settled that it must appear that an association, if it is not a corporation, has received by appropriate legislation a legal status so that it, or its members, may be sued in the name of the group. Where, however, an unincorporated association or a group of individuals have not received any such legal status, they are nothing but individuals, however related to each other, and can only be sued as such.

It is not pretended that the United Mine Workers of America, or these unincorporated labor unions, have a status of "persons" under the statutes of Arkansas, much less that the International Association, the United Mine Workers of America has any such status. Moreover, this action is brought under a Federal statute, which not only fails to make such groups "persons" in law, but by its own definitions excludes them from that category.

The applicable provisions of the Sherman-Anti-Trust Acts (26 Stat., 209) are sections 7 and 8 as follows:

> "Sec. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

> "Sec. 8. That the word 'person' or 'persons', wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws

of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

It is at once apparent that Congress did not attempt to provide a new remedy against all unincorporated groups or associations. Congress provided no designation of officers or agents upon whom process might be served. It made no provision as to the effect of the judgment to be recovered, or limiting execution thereon to common property or property jointly held through the group or association. If it was the intent of Congress to provide that any unincorporated group, association or labor union could be sued in its name, Congress undoubtedly would have said so and would have provided the rules of procedure for a practice of such scope.

This is a penal statute. It is not only penal because it may be enforced by criminal prosecution, but treble damages may be awarded, and under the alleged authority of the statute have actually been awarded in this action. We submit that it is wholly inadmissible to take this act of Congress and give it a breadth which would reach, contrary to its terms and to the principles of the common law, every unincorporated association.

The Circuit Court of Appeals said (235 Fed., at pp. 5, 6):

"We are of the opinion that it was clearly not the intention of Congress to exempt anyone from liability for injuries caused by combinations and conspiracies in restraint of interstate trade. We therefore decide that the word 'associations', in Section 8, includes unincorporated associations, such as the defendants are shown to be.

* * * * * * *

"If we are correct in our view that voluntary unincorporated associations are included in the word 'associations' as used in Section 8, above quoted, then we are of the opinion that there is a clear and necessary implication that the association may be sued in its own name; otherwise the provision in the law that the association should be liable could not be enforced, and the law would fail as against all such associations, the remedy of the injured party being confined to an action against the mere agents and employees of the association, in most cases unable to respond in damages."

The Court thus places its decision, first, upon the ground that it was not the intention of Congress "to exempt anyone from liability" for the injuries described. But Congress defined who were to be liable. They were to be "*persons*" who shall make any such contract or engage in any such combination or conspiracy (Secs. 2, 3). The term "person" has a well established legal significance and an unincorporated group is not, as such, a "person." And the extent to which any association or group might be held liable as a "person" under the Sherman Anti-Trust Act was explicitly defined by Congress in Section 8. Congress included "corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country." It was not the privilege of the court below to go beyond these terms in the search of any supposed policy. The question was not, who should be exempted from liability, but who were made liable.

The policy of the statute must be found in its terms. *In United States* v. *Wiltberger,* 5 Wheat., 76, 96, Chief Justice Marshall said:

> "To determine that a case is within the intention of a statute, its language must authorize us to say so."

In *Hadden* v. *The Collector,* 5 Wall. 107, 111-112, the Court, by Mr. Justice Field, said:

> "What is termed the policy of the government with reference to any particular legislation is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes."

It needs no argument to show that these observations are particularly pertinent, with reference to asserted public policy. That is a question upon which the conflicting opinions may be urged in debate in Congress.

Having gone beyond the terms of the Act to sustain an action of this sort in the name of these groups or associations, the Court below took the next step and, without any authority from legislation, sustained a suit against the group in its name, thus establishing a practice which, as we conceive it, has no sanction in any statute or in any precedent.

Is it not patent that it requires competent legislative authority to provide for a suit against persons in the name of an association which has not been incorporated, and that there is no such legislative authority in this case?

It may be said that in some cases associations have been joined with the individuals and corpo-

rations comprising the association in suits under the Sherman Act, but these have been equity suits for injunction in which the individuals and corporations, which were members of the association, were parties. In the case of *Eastern States Lumber Association* v. *United States*, 234 U. S., 600, also an injunction suit, it does not appear that the point was raised.

Here the question is presented in a suit for treble damages under Section 7 and the point of non-suability has been made from the outset.

There is but one question with respect to this fundamental issue. That question is—What is the meaning of the provision of Section 8 of the Sherman Anti-Trust Act that the word "person" or "persons" shall be deemed

> "to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country?"

Congress thus embraces, in its concept, corporations and those associations which have been given a legal status as "persons". That, as we conceive it, is the plain meaning of its language. Had Congress stopped with the words "corporations and associations", the rule *noscitur a sociis* would apply and the term "associations" would be taken to mean such organizations as those to which legislation had given a legal status as *quasi* corporations. But the words that Congress added, stating explicitly what sort of associations were meant, relieves the question of doubt.

In *Elliot* v. *Freeman*, 220 U. S., 178, this Court had before it the construction of the Corporation Tax Act of August 5, 1909 (36 Stat. 11, 112), directed against

"Every corporation, joint stock company or association * * * now or hereafter organized under the laws of the United States or of any State or Territory of the United States or under the acts of Congress applicable to Alaska or the District of Columbia."

The Court held that this provision had reference to "associations" organized under statute and did not include a Massachusetts trust, which was a mere voluntary association. The court said that the pertinent question under the act was "Are these trusts organized under the laws of the State?" It was said that the description of the corporation or joint stock association "as one organized under the laws of a State at once suggests that they are such as are the creation of statutory law, from which they derive their powers and are qualified to carry on their operations." The Court referred to the difference between joint stock associations at common law and those organized under statutes, quoting from Cook on Corporations, section 505, as follows:

" 'There is an essential difference between a joint stock company as it exists at common law and a joint stock company having extensive statutory powers conferred upon it by the State within which it is organized. The latter kind of joint stock company is found in England and in the State of New York. To such an extent have these statutory powers been conferred on joint stock companies that the only substantial difference between them and corporations is that the members are not exempt from liability as partners for the debts of the company.'

And the Court concluded as follows:

> "Entertaining the view that it was the intention of Congress to embrace within the corporation tax statute only such corporations and joint stock associations as are organized under some statute, or derive from that source some quality or benefit not existing at the common law, we are of opinion that the real estate trusts involved in these two cases are not within the terms of the act."

The Sherman Anti-Trust Act presents no basis for a distinction because the words are "associations existing under or authorized by the laws either of the United States * * * the laws of any State," etc. This is apparent for these reasons:

(1) The expression "existing under or authorized by the *laws*" of the United States or of any State should appropriately be taken to refer to statutes. The expression is not "existing under the *law*", or any association that is "lawful." That is not the meaning of the words "existing under or authorized by the *laws*" of the United States or of any State.

> "The use of the plural form, laws, generally indicates that the word is to be taken in this meaning"—that is in the sense of statutes. (See Abbott's Law Dictionary, Title, Law, subdivision 3.)

Mr. Justice Story, in *Swift* v. *Tyson*, 16 Pet. 1, 18, refers to this usual significance of the expression "*laws*" of a state. If Congress had intended to embrace every lawful association as distinguished from those associations which have been given by appropriate legislation the status of

"persons" in law, it would be safe to say that Congress would never have said "existing under or authorized by the laws of either the United States, the laws of any Territory, the laws of any State, or the laws of any foreign country."

This would be an extraordinarily roundabout way of referring to what was merely a lawful association.

(2) Another objection to the construction urged by the defendants in error is that the clause would mean that associations that were "*unlawful*" were not within the purview of the section. That Congress intended to make a distinction between an association that existed under law or was lawful and an association that did not exist under law or was outside the pale of the law. Of course, such a construction is directly at war with the purpose of the statute. For, if it could be conceived that there was an unlawful association, or one which did not exist under law, and that Congress intended to embrace unincorporated associations generally regardless of any legislation that had given the status of persons in law, then the policy which would include the lawful association and exclude the unlawful one would be entirely insensate.

(3) There is another, and as we think, conclusive objection. If Congress had intended to refer simply to unincorporated associations, without reference to any legislation which had given them the status of persons, that is to any lawful association whatever, it would not have added the last clause. The construction for which the plaintiffs in error contend makes the words "existing under or authorized by the laws of either the United

States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country," *surplusage*.

For according to the view asserted, the same meaning would have been attached to the clause, if these words had been omitted, as is now attached to them. Our opponents must first override the application of the rule *noscitur a sociis*, which refers the word "associations" to the same general class as corporations, that is, to those which have received legislative sanction and have been constituted persons in law, and after this has been accomplished, to ignore the definition of Congress as having no significance whatever.

The Act of Congress cannot be construed in this way. The qualifying words are not surplusage, but definitive of intent. They manifestly refer to associations that have been given a legal status. It is inconceivable that had Congress intended to make any group of persons who constitute an association in the broad sense liable as an association, and suable in its name, it would have used the words of this Act.

The Circuit Court of Appeals (235 Fed., at p. 5) referred to the fact as stated in *Loewe* v. *Lawlor*, 208 U. S., 274, that:

> "The records of Congress show that several efforts were made to exempt, by legislation, organizations of farmers and laborers from the operation of the act, and that all these efforts failed so that the act remained as we have it before us."

But it will be remembered that in *Loewe* v. *Lawlor, supra*, the suit was not brought against the United Hatters of North America, but against the individuals. (See also *Lawlor* v. *Loewe*, 235 U. S.,

522, 523). The remarks of the Court in that case cannot be taken to furnish the slightest ground for the contention that an unincorporated labor union can be sued in its name. If, however, the question of the exclusion or inclusion of unincorporated labor unions as associations, within the scope of the act, is raised, then the language of Section 8 must be regarded as controlling. If it be supposed that Congress knew, as was the fact, that the labor unions were unincorporated and did not have the standing under legislation of persons in law, then certainly Congress would not have used the language of Section 8 for the purpose of including them. The present case, as an endeavor to reach the association by a suit against it in its name, instead of a proceeding against alleged offending members as in *Loewe* v. *Lawlor*, has no precedent whatever.

It may also be pointed out that by Section 7 of the Act, it shall be provided that the action shall be brought "in the district in which the defendant resides or is found." This provision is appropriate if the word association is used as defined in Section 8, but is inapposite if it is sought to give it the breadth for which the defendants in error contend.

The decision below rests upon the mere fiat of the Court that the common law remedy against an association like the United Mine Workers of America is inadequate. The Circuit Court of Appeals cites the case of *Taff Vale R. Co.* v. *Amalgamated Society of Railway Servants*, [1901] Appeal Cases, 426, as an authority for the proposition that the right to sue a union in the common name may be implied. That case, however, was wholly different. The association in the *Taff Vale* case existed under and was authorized by the

Trade Union Acts of 1871 and 1876. It was a trade union registered under those Acts and sued in its registered name. It owed its legal validity to the acts in question (*id.*, p. 427). As Lord Brampton said, "a legal entity was created" under the Acts.

Whatever may be said of the *Taff Vale* case as a matter of statutory construction (and it may here be noted that the effect of the decision was swept away by Parliament five years later, 6 Edw. VII, Chap. 47, Sec. 4, Sub-section 1; see *Vacher & Sons, Limited*, v. *London Society of Compositors*, 1913 A. C., 107), it certainly forms no precedent for a construction of Sections 7 and 8 of the Sherman Anti-Trust Act. By that Act, Congress did not attempt to give labor unions a status which they did not have before. The Sherman Act does not purport to give any powers to labor unions. Congress had already prior to that Act passed a statute with regard to the status of labor unions. This was "an act to legalize the incorporation of trade unions" (24 Stat., 86). By this act a trade union is permitted to file its articles with the Recorder of the District of Columbia; and it might then become the kind of association which was contemplated by the Sherman Act. But when this is not done and the Union remains a mere voluntary association, or group of individuals, to hold that it may be sued and judgment rendered against it in its common name for an alleged violation of the Sherman Anti-Trust Act, is, we submit, wholly unwarranted.

Is it conceivable that in *Montague & Co.* v. *Lowry*, 193 U. S., 38, an action could have been maintained against the Tile Mantle & Grate Association of California? Or in *Loewe* v. *Lawlor*, 208 U. S., 274, could an action have been brought

against the United Hatters of North America? Or in *Thomsen* v. *Cayser*, 243 U. S., 66, would this Court have sustained a judgment against the South African Steamship Lines?

These questions answer themselves. No one doubts that the Sherman Anti-Trust Act applies to the members of a labor union as well as to business men, but the Act has its appropriate application when actions are brought against the persons guilty of combination in accordance with the familiar principles of the common law. The statute does not authorize, and there is no language in the statute that even remotely suggests, that it was the intent of Congress to authorize a suit for treble damages to be brought and judgment to be recovered against an unincorporated association, or group of individuals, in the name of the association or group, when it has not received by proper legislation the status of a person in law.

THIRD. Recovery against the United Mine Workers of America was entirely unwarranted by the evidence.

The United Mine Workers of America is a voluntary association or labor union with about 400,000 members, all miners, residing in different parts of the United States, Canada and Mexico.

It is a lawful organization with a valid membership agreement, or constitution, defining lawful aims and means.

By the judgment below, this association, embracing this membership, is held liable for upwards of $600,000 damages for acts in which it

did not participate and which it never authorized or ratified. The recovery, it is submitted, has not the slightest warrant in law.

I. A labor union, as such, is not within the Sherman Anti-Trust Act.

It was not the intention of Congress to make it criminal for workingmen to associate themselves together for the purpose of improving conditions of work and obtaining better wages and more reasonable hours of labor. The fact that a labor union has a membership throughout the country does not bring it within the Anti-Trust Act.

In *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S., 418, this court by Mr. Justice Lamar, after referring to the Sherman Anti-Trust Act, said (p. 439):

> "Society itself is an organization and does not object to organizations for social, religious, business and all legal purposes. The law, therefore, recognizes the right of working men to unite and to invite others to join their ranks, thereby making available the strength, influence and power that come from such association. By virtue of this right, powerful labor unions have been organized."

The question has been placed beyond the reach of controversy by the definitive declaration of Congress.

In Section 6 of the Clayton Act (Act of October 15, 1914 (38 Stat., 730), it is provided:

> "Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and op-

> eration of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."

This is a legislative interpretation of the Anti-Trust Act; it defines its scope and makes it impossible to ascribe to Congress a different intent.

The Clayton Act was *in pari materia* with the Sherman Anti-Trust Act. The familiar rule of construction was thus stated in *United States* v. *Freeman*, 3 How. 556, 564, 565:

> "* * * if it can be gathered from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute." (See also *Tiger* v. *Western Investment Company*, 221 U. S., 286.)

And this clear statement of the intent of Congress simply confirms the view which would naturally and properly, according to principle and precedent, be taken of the former statute according to its own terms.

When Congress thus referred to "labor organizations" and the "legitimate objects" of labor unions, it must be assumed that Congress knew, as every one else knows, the nature and purposes of these organizations. That they embraced working men throughout the country, was a patent fact. That they were intended to improve the

condition of working men with respect to hours, wages and labor conditions is a matter of common knowledge; that they were devoted to the increase of their membership and extension of their influence was known to every one in the land.

These undoubtedly were the "legitimate objects" to which Congress referred. And Congress obviously meant that no one should be heard to say that Congress intended that organizations of this sort, or these objects, were condemned by the Sherman Anti-Trust Act or any other Act. The courts, in dealing with the Act, are not enforcing judicial regulations but the will of Congress, and Congress has spoken its will upon this point.

The miners were thus entitled to organize, and through organization to seek the amelioration of the condition of miners in the various mines throughout the country and to pursue this end by all lawful means.

II. The constitution of the United Mine Workers of America is the agreement of membership. It fixes the terms upon which these miners unite and contribute to the funds which the judgment below turns over to the defendants in error. The constitution and the objects of the association are entirely lawful.

In *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S., 229, 253, this court by Mr. Justice Pitney as we read the opinion recognized that the objects of this association, United Mine Workers of America, were proper and legitimate. In that case, Mr. Justice Brandeis said (p. 267):

> "The United Mine Workers of America does not appear to differ essentially in character and purpose from other international unions which, like it, are affiliated with the

> American Federation of Labor. Its membership is said to be larger than that of any other; and it may be more powerful. But the common law does not limit the size of unions or the degree to which individual workmen may by union increase their bargaining power. * * * The Union is not an unlawful organization, and is not in itself an unlawful conspiracy."

While this statement was made in a dissenting opinion, there can be no doubt that it represents a correct exposition of the law as applied to the purposes and general objects of this association.

The constitution deals with strikes and classifies them as follows: (1) Where the major portion of the members of a district are to be involved; (2) where the strike is in an unorganized field; (3) where the strike is in an organized field, but is to be financed by the International Union; and (4) where the strike is in an organized field and is not to be financed by the International Union."

In the first three cases, the sanction of an international convention or of the International Executive Board must be procured before a strike may be called. In the last case, the district is permitted to call a strike upon its own responsibility.

Section 2 of Article XVI of the constitution provides (Transcript, p. 446):

> "Sec. 2. Districts may order local strikes within their respective districts on their own responsibility, but where local strikes are to be financed by the International Union, they must be sanctioned by the International Executive Board."

The defendants in error have sought to escape the effect of this provision by the argument that,

although it is distinctly provided that local strikes which are not sanctioned by the International Association are conducted by the districts ordering them *"on their own responsibility"*, still they are to be deemed to be conducted on the responsibility of the International Association.

The argument is made that this language is permissive; that instead of being a limitation of responsibility of the International Association, it is an extension of that responsibility. It would be difficult to find a more complete reversal of meaning. It is urged by the defendants in error that the district, and the members of local unions, in the case of a local strike conducted on their own responsibility and without the sanction of the International Association, are the agents of the International Association in calling and conducting the strike. This is the pith of the opposing theory. But this is simply to ignore the definitive words of the section above quoted, "on their own responsibility." If such strikes, not sanctioned by the International Association, are ordered by districts "on their own responsibility," then they are certainly not ordered on the responsibility of the International Association and the International Association is not to be responsible for them. This is the formal and definitive agreement of all the members of the International Association with each other. It is an agreement to the effect that if some of the members locally go on strike on their own account, such a strike shall be on their own account, and that the other members shall not be in any way responsible therefor. Responsibility must rest upon facts of authorization and representation, which here are absolutely negatived.

The insertion of this provision had a very clear purpose, for the context shows that the important point of a financial support for a district engaged in a strike was involved, and it was made clear that the International Association could not be called upon for any support for a strike unless it was sanctioned, and that if a district ordered a strike, without the authority of the International Association, the latter assumed no responsibility of any sort with respect to it.

A case much in point is *Denaby & Cadeby Main Collieries, Ltd.*, v. *The Yorkshire Miners' Association* [1906], Appeal Cases, 384. That was an action against the Yorkshire Miners' Association for damages sustained by reason of an unlawful strike which had been called by officers of one of the branches of the association. The House of Lords held that relationship of agency between the association and the branch officers did not exist and that plaintiff could not recover against the entire association for the unlawful strike called by the officers of one of the branches. The rules of the miners' association in that case were similar in certain essential features to those involved in this action. The discussion of the Lord Chancellor concerning their effect is so illuminating that we quote from his opinion at some length (*id.*, pp. 389, 390, 391, 392):

> "Mr. Bankes contended that Nolan and Humphreys, delegates to the two branches, and the committees of the two branches, had, as the jury found, in fact procured the strike on June 29 in breach of contract, and that the defendant association was, under its constitution and rules, liable as principals for this wrongful conduct of their agents, apart from any ratification. It is necessary to ascertain

the relations of the association with its branches and their respective officials in order to decide this point of agency.

"In substance the position is as follows: The defendant association comprises about 150 branches, extending, we were told, over Yorkshire and the Midlands. The Denaby branch and the Cadeby branch consist of men working at each of these two adjoining collieries, both belonging to the same owners, and I suppose, roughly speaking, that each branch of the association consists of men working in the same colliery or under the same employers. Certainly in the present case it is so.

"Every member of the association contributes according to a fixed scale to its funds. These funds are collected by the branch, and after defraying its local expenses the balance is handed over to the association to be applied in paying the general expenses, the benefits, such for example as funeral allowances, and also, in case of need, in maintaining a strike. There are branch officials elected by members of the branch, and central officials of the association elected by the branches.

"The supreme government of the association is vested in the council (central council, I will call it), which consists of officials, the president, two secretaries, the treasurer, and also of delegates, one from each branch, each with a voting power proportioned to the number of members in the branch. It is unnecessary to mention the central executive committee, which only acts on emergencies in the interval between council meetings, and has no authority in regard to strikes.

"Besides these central bodies each branch has a committee of its own, consisting of persons elected by members of the branches. Careful provisions are to be found in the rules dealing with the rights and duties of the association and the branches respectively

in case of strikes and lock-outs, and for a very obvious reason. Strikes or lock-outs may be, and generally are, local in their character, and arise out of disputes relating to the local conditions of service. If one branch were able without control to call out its members on strike in consequence of a local dispute and to claim the financial support of the entire association as a matter of right, then the caprice or folly or selfishness of a few men might dissipate the common funds of all. Hence the necessity for strict rules.

"No branch is allowed to strike unless two-thirds of its members, voting by ballot, so determine, nor unless three-fourths of the members composing the branch record their votes. And even if that majority is procured the members of the branch are entitled to strike pay only 'if the employers refuse to remedy their grievances and after all proper and peaceful means have been tried to effect a settlement by deputations from members with the advice and assistance of the council and such member or members be permitted to cease work by the sanction of the association in accordance with the rules.' Another rule authorizes a registered vote to be taken throughout the entire association whenever any number of branches numbering one-fourth of the council demand such vote on (among other things) 'the adoption or prolongation of a strike.'

"The net result of these provisions is that all strikes of a branch are prohibited unless the prescribed majority of branch members is obtained; that no strike pay is to be granted except the strike be sanctioned by the central council after peaceful efforts have been exhausted, but that a plebiscite of the entire association may adopt a strike after it has commenced.

"On the other hand, if any branch is locked out in consequence of any action lawfully

taken by the association to remedy grievances the men are entitled to maintenance equal to strike pay.

"Can it be said in the face of these rules that the association is liable in damages for the action of delegates or of branch officials or committees in procuring a strike (whether accompanied or not by breach of contract) without a ballot, without the sanction of the council, and without a registered vote of the entire association? In my opinion the association is not so liable.

"The delegates are agents of the branches to represent them in the council. When acting in the council they are agents of the entire association to do the business of the council. They are not agents of the association to represent it or act for it in their localities, either as to strikes or other matters.

"Branch officials and committees are elected by members of the branch, who are engaged in a common service under one particular employer. If they quarrel with the employers about the conditions of their service they have a right to strike. The association does not confer that right, which is derived from the general law, but it restricts the right by rules requiring a prescribed majority as the indispensable preliminary. I do not see how either the officials or committees thereby become agents of the association to procure a strike even if it were lawful and regular, still less to procure it contrary to the rules and contrary to the law in breach of existing contracts.

"It is true that on certain conditions the association is bound to furnish strike pay. Will that circumstance create the agency for which Mr. Bankes contends? I will suppose that the employers also are members of an association of coalowners, as we were told they are, and that the coalowners' association bind themselves to support each other with

money in the event of any one member locking out his workmen after certain conditions had been observed. If such member locked out his men without giving the notice prescribed by contract it would seem very strange to suppose the other members were liable to damages for an act over which they had no control and which was contrary to the conditions. Yet the cases are precisely the same."

In that case, it was also urged, as it is urged here, that the Yorkshire association had ratified the unlawful acts of the branch association. The evidence in that case showed that the association had granted benefits to the strikers, a fact not present here. But the House of Lords held that the fact that the whole association thus supported the strike did not operate as a ratification of the unlawful character of the strike. Lord James said upon this point (*id.*, p. 405):

"It was further contended on the part of the plaintiffs that the acts of the defendants' union in granting strike pay and some individual acts established liability on account of what was termed maintaining the strike existing at the Denaby and Cadeby Collieries. Importance must be attached to this argument in consequence of the judgment given by the learned Master of the Rolls upon the point thus raised. In relation to it consideration should be given to the term 'maintaining the strike.' If one assists in procuring the commission of an unlawful act, doubtless liability follows, and so if the defendants had done anything, by assistance or otherwise, to induce the branch workmen to break their contracts the union would have been liable. But no such inducing to break a contract was proved. When the assistance was given, that is, when strike pay was voted, the unlawful

acts had been committed, all the contracts of employment were terminated, and employers and employed were in respect of contracts entirely unconnected. So that the effect of the grant of strike pay was not to cause or induce the commission of an unlawful act, but to place the workmen in the position of being able to maintain themselves without entering into a new contract of labour with the plaintiffs or with anyone else. This is no more than the subscribing to a strike fund. Within the last few years we have had instances of the public contributing largely towards the maintenance of men who had ceased to work under conditions which constituted what is called a strike. Were these subscribers liable to an action? It surely must be admitted that they were not, even if the workmen had broken their contracts."

In the opinion of the court below (258 Fed. p. 840) the court inadvertently and erroneously ascribed a provision of the district constitution to the constitution of the International organization. The court quotes Article XII, Section 2, which it says is "of the constitution of the national organization," when it is not. The provision referred to is a part of what is found in the district constitution of District 21 (Transcript, p. 2849). This provision is as follows:

> "Sec. 2. Any Local Union striking in violation of the above provision will not be recognized or sustained by the District officers. Before final action is taken by the District upon questions that directly or indirectly affect the interests of the mine workers of another District or may require a strike to determine, the President and Secretary of aggrieved District shall jointly prepare, sign and forward to the National President a statement setting forth the grievance com-

plained of, the action contemplated by the District, together with the reasons therefor, and await the decision of the National President and be governed thereby; and in all cases the Mine Committee and employees and all parties involved must continue to work pending an investigation and adjustment until a final decision is reached in the manner above set forth."

In the first place, it is to be noted that this provision of the district constitution, with respect to a local union, expressly disclaims responsibility for strikes which the district union does not sanction. Then, the provision that, before final action is taken by the district upon questions that affect the interests of mine workers in another district that may require a strike to determine, a statement of the grievance, together with the action contemplated by the district, shall be forwarded to the National President and his decision awaited, in no way alters the effect of the provision of the constitution of the International Association. The stated submission to the National President, and the provision therefor, did not constitute an authorization by the National President, much less by the International Association. Further, under the constitution of the International Association (the words "National" and "International" are used interchangeably), the President had no authority to sanction a strike without the action of the International Executive Board.

The Court below seemed to go upon the principle that the International Association had control over the district. But the International Association did not have control over the district where the district went ahead on its own respon-

sibility. By the express provision of the constitution, to that extent there was local autonomy. The control which the International Association was entitled to exert was control according to the terms of the constitution of the International Association, and not otherwise.

It is wholly untenable to say that, when a local union acts on its own responsibility and the International Association does not sanction its action, the International Association must resort to expulsion to save itself from liability. The fallacy of the argument is apparent, for if the Association were liable it could not save itself later by the expulsion; and when the local responsibility is clearly defined and the Association is not liable, the latter does not have to go to the extreme of expulsion to escape that which has never been imposed. It is also clear that in relation to expulsion there would be many considerations of obvious pertinence quite apart from the action of a local union in a particular matter. To hold that failure to expel a local union makes the entire membership of the International Association liable, on a theory that it has sanctioned that which was done without responsibility on the part of the International Association, is a manifest *non sequitur*.

The Court below went upon a theory of power and control conferred by the constitution, which is untenable.

III. The United Mine Workers of America did not authorize, participate in or ratify the alleged acts committed in Arkansas by reason of which the recovery of damages was allowed.

Without reviewing these acts in detail (we have sufficiently referred to them in the statement

which precedes this argument), or the evidence as to incitement or provocation, it is sufficient to say that the particular acts which it is said caused the alleged damage consisted of trespasses and destruction of property. These disturbances were local, that is, were at particular mines in Arkansas. Some of these mines had already been closed down; another was being partly operated in violation of an agreement with the miners. It was manifestly a condition of intense feeling and the entire community was aroused. It was, as we have said, a local disturbance, arising from local grievances, caused entirely by local conditions.

The Dallas mine had been closed for about two years. The Prairie Creek and Mammoth Vein Mines were shut down in March, 1914. As to these mines, there was really not a "strike" but a lock-out. There appears to be no question as to the facts (See Statement, *ante* pp. 57, 58). There was no obligation upon the men to work for the Mammoth Vein Coal Mining Company when it resumed operation of the Prairie Creek mine on April 4, 1914. Their failure to do so certainly cannot be interpreted as a strike. And there is no evidence that the district organization called a strike at these mines. The conditions that confronted the officers of District No. 21 were not of their choosing. They did not select the persons working at Prairie Creek and Mammoth Vein mines as their agents to carry into effect the purposes of the organization.

As to the Coronado mine, the situation is different. This mine ran until April 18, 1914. But there is nothing to show that the strike at the Coronado mine was conducted in an unlawful manner. There was no riot at this mine. It was not

destroyed until three days after the "battle" of July 17, 1914, under circumstances which afford no sufficient basis for a finding against the miners.

But, in any view, the controlling fact is that no Board or officer of the International Association, the United Mine Workers of America, participated in any of these acts or authorized any of them at any of the mines. If a distinction between a "lock-out" and a "strike" is ignored, and it be assumed that there were strikes at all the mines in question, still none of these strikes, and none of the acts in question, was authorized or sanctioned by the International Association.

Moreover, nothing is better settled than that a "strike" is not in itself unlawful, and the question here is the responsibility for particular acts that were not any necessary part of a "strike." Apart from the fact that in no proper sense was interstate commerce involved, and hence the Sherman Anti-Trust Act was wholly inapplicable, the United Mine Workers of America were in no way responsible for these transactions in Arkansas as those engaged in the "strike" were acting on their own responsibility and did not in that matter represent the International Association.

The attempt to hold the International Association is simply, when analyzed, we submit, an attempt to reach through the International Association the property of hundreds of thousands of miners upon no better pretext than the contention that these defendants in error cannot otherwise secure the payment of damages. It would be a novel doctrine in the law to hold innocent persons responsible on the theory that they have the means to pay.

The International Association defined its objects and its responsibility is to be determined

with reference to what they have actually authorized or sanctioned. There can be no departure from this familiar principle in a suit against a labor union.

Taking the view most favorable to the defendants in error, it appears that the recovery in this case was upon the theory that if a "strike" occurs at any mine in the United States in which the members of a local union are concerned, and in the course of the disturbances which follow there are injuries to property which a jury may find to be due to the acts of members of the union in their desire to prevent non-union men from working at the mine, the International Association, the United Mine Workers of America and its members generally are responsible in treble damages for these injuries although the "strike" was conducted on the responsibility of a local union and the International Association, its Board and its officers had no connection therewith or with any of the acts in question.

Such a contention, we submit, furnishes its own answer. Despite the voluminous character of this record, the essential foundation for a recovery against the United Mine Workers of America is wholly lacking because there are no facts upon which the fundamental principle of liability can be applied.

It is not enough to show that some members of the Union committed acts of violence. Even in cases of conspiracy, where an illegal combination is found to exist, members are not liable for acts not within the scope of the illegal agreement. (*Commonwealth* v. *Campbell,* 7 Allen, 541, 544; *Pettibone* v. *United States,* 148 U. S., 197, 207).

And certainly there is no principle better established than where a number of persons combine to achieve a lawful end by lawful means, certain persons of the association combine to achieve that same end by unlawful means, the whole association is not responsible for the unlawful acts of the few members.

In *Commonwealth* v. *Hunt* (4 Metcalf 111, 129), Chief Justice Shaw said:

> "But when an association is formed for purposes actually innocent, and afterwards its powers are abused, by those who have the control and management of it, to purposes of oppression and injustice, it will be criminal in those who thus misuse it, or give consent thereto, but not in the other members of the association."

In *United States* v. *Kane*, 23 Fed., 748, Mr. Justice Brewer laid down the same principle. He said, (p. 751):

> "* * * where a party of men combine, with the intent to do an unlawful thing, and in the prosecution of that unlawful intent one of the party goes a step beyond the balance of the party, and does acts which the balance do not themselves perform, all are responsible for what the one does. In order to make that rule of law applicable, there must be a concert of action; an agreement to do some unlawful thing. If there is no such agreement, no such preconcert of action, why then each individual is responsible simply for what he does. Thus, for instance, if there should happen to gather here on the street 50 or 100 or 200 men, with no preconcert of purpose, accidentally meeting here, and a street fight should develop in their midst, all of that crowd are not responsible for it; that would be unjust; that would be unfair; because they

did not go there, they did not meet together, with a preconcerted purpose to do anything unlawful, and, although something unlawful may be done in that crowd yet only they are at fault who do the unlawful thing."

In *Lawlor* v. *Loewe,* 187 Fed., 522, the Circuit Court of Appeals, for the Second Circuit, reversed the judgment in favor of the plaintiffs upon the ground that the district court should have left to the jury the question of whether the members of the association had assented to the unlawful means which had been used to coerce the plaintiffs into unionizing their shop. The Court by Mr. Justice Lacombe said, page 526:

"It has been argued here that the mere fact that any individual defendant was a member of and contributed money to the treasury of the United Hatters' Association made him the principal of any and all agents who might be employed by its officers in carrying out the objects of the association, and responsible as principal if such agents used illegal methods or caused illegal methods to be used in undertaking to carry out those objects. We cannot assent to this proposition. The clause of the constitution of the United Hatters which provides that certain of its officers 'shall use all the means in their power to bring such shops (i.e., nonunion shops) into the trade' does not necessarily imply that these officers shall use other than lawful means to accomplish such objects. Surely the fact that an individual joins an association having such a clause in its constitution cannot be taken as expressing assent by him to the perpetration of arson or murder. Something more must be shown, as, for instance, that with the knowledge of the members unlawful means had been so frequently used with the express or tacit approval of the association, that its agents were

warranted in assuming that they might use such unlawful means in the future, that the association and its individual members would approve or tolerate such use whenever the end sought to be obtained might be best obtained thereby."

Certiorari was denied by this court, 223 U. S., 729. After the second trial, when this case was again before this court, the following instruction to the jury was approved (235 U. S., pp. 534, 535):

> "* * * if these members paid their dues and continued to delegate authority to their officers unlawfully to interfere with the plaintiffs' interstate commerce in such circumstances that they knew or ought to have known, and such officers were warranted in the belief that they were acting in the matters within their delegated authority, then such members were jointly liable, and *no others*" (italics ours).

The Court then went on to show that the defendants who were held liable all knew and approved of the illegal boycotts which had been conducted by their officers.

In *Eagle Glass & Mfg. Co.* v. *Rowe*, 245 U. S., 275, a suit was brought in the District Court for the Northern District of West Virginia to restrain officers and members of the American Flint Glass Workers Union from interfering with the relations existing between plaintiff and its employees in West Virginia. Plaintiff also added as defendants eight other parties, residents of Steubenville, Ohio, and citizens of that State, averring that they were members of the American Flint Glass Workers Union and had assisted in supporting their officers in the attempt to unionize plaintiff's employees and to force plaintiff to recognize the

union. These Steubenville defendants answered and submitted affidavits alleging among other things (pp. 285, 286):

> "Fourth. These respondents admit that they are members of a local union of glass workers at Steubenville, Ohio, which local union is affiliated with the American Flint Glass Workers' Union, and that, except their relation as members of their local union, they have no connection or relation whatever with the other defendants, that they are not officers, agents, representatives or organizers of their local union, or of the American Flint Glass Workers' Union, and that even in their capacity as members of their local union they have not by any act, word, or deed of theirs in any manner, authorized, assisted, aided or abetted or encouraged any of the other defendants in doing any of the things alleged against them, (the other defendants) in the bill of complaint or the amended bill of complaint."

Notwithstanding these allegations, the District Court granted a temporary injunction against these eight defendants, residents of Ohio. The Circuit Court of Appeals unanimously reversed this decree saying with reference to the attempt to bring in as parties the members of the Ohio local union (219 Fed. 719, 720, 721):

> "The union is a voluntary association, and its members are not responsible for a tort of other members, unless they have authorized or participated in it, or have aided in some way in its perpetration after knowledge of the illegal purpose, or facts from which such knowledge may be inferred. *Pettibone* v. *U. S.*, 148 U. S. 197, 13 Sup. Ct. 542, 37 L. Ed. 419; *Lawlor* v. *Loewe*, 209 Fed. 721, 126 C. C. A. 445. * * * The plaintiff had no

pretense of a case brought against Glasstetter and the other defendants brought in by amendment for participating or aiding the defendants not served, in the alleged torts committed by them, and, therefore, there was no such common or general interest as authorized the court's decree against the defendants served, by virtue of the service and appearance of the defendants brought in by amendment."

This Court affirmed the decision of the Circuit Court of Appeals, saying, 245 U. S., 280:

> "So far as the decision of the Circuit Court of Appeals dissolved the temporary injunction upon the ground that the Steubenville defendants had denied, and plaintiff had not adduced sufficient evidence to sustain, the averment of the amended bill that they had constituted Gillooly and the other original defendants their agents and representatives and had assisted and supported them in their efforts to unionize plaintiff's employees and force plaintiff to recognize the American Flint Glass Workers' Union, we see no reason to disturb the decision."

The same allegations of the answer and supporting affidavits which we have quoted above and which were filed in behalf of the Steubenville defendants in the case of *Eagle Glass & Mfg. Co.* v. *Rowe* could have been made by practically every one of the 400,000 members of the United Mine Workers of America. They had no connection or relation whatever with the individual defendants named in this case except that they belonged to the same International Union. In their capacity as members of the United Mine Workers of America, they have not by any act, word or deed of theirs in any manner authorized, assisted, aided or abetted or encouraged any of the individual de-

fendants in doing any of the things alleged against them.

Moreover, in *Eagle Glass Mfg. Co.* v. *Rowe*, there was only an application for an injunction. Here is an action at law to recover treble damages upon the ground that the members of the United Mine Workers of America are engaged in a combination in restraint of trade. Certainly, the law does not require less proof connecting the individual members of a union with the tortious acts of other members in a suit under the Sherman Anti-Trust Act than it does in an application for an injunction on ordinary equitable grounds.

The liability of the International Association in this case should be tested by the question whether an individual miner, a member of the United Mine Workers of America, living in Pennsylvania, could be indicted, convicted and sent to jail for violation of the Anti-Trust Act because of the conduct of these Arkansas miners and his alleged connection with them. The gist of the action under Section 7 is the alleged combination in restraint of trade. The individual miners, members of the International Union, are the persons who, it is claimed, constitute this combination. Unless these miners located in Pennsylvania, Ohio, Indiana and other states, as well as in Arkansas, have confederated together to restrain by unlawful means interstate trade and commerce, there is no basis for the judgment against the association.

In *Patterson* v. *United States*, 222 Fed. 599, the Circuit Court of Appeals for the Sixth Circuit laid down the rule that it was not sufficient to connect a person with a conspiracy in restraint of trade, that he knew of it or acquiesced in it, but

that it must be shown that he became a party to it. The court said (p. 631):

> "In order for the defendants to have so conspired it is essential that they had such connection with the National Company that in the performance of their duties they had to do with its competitors. Those of its officers and agents who had nothing to do with competition as, for instance, those in the manufacturing department, cannot be said to have so conspired. It is not sufficient to connect any officer or agent of the National Company with the conspiracy that they knew of it or acquiesced in it. They must by word or deed have become a party to it. *People* v. *Richards*, 1 Mich. 216, 51 Am. Dec. 85; 5 R. C. L. p. 1065."

Here, however, there was not only no proof that the members of the United Mine Workers of America knew of the plans of the Arkansas miners to attack plaintiff's mines, but there was no proof even of acquiescence, unless such evidence be found in the fact that the miners failed to carry on an investigation into the causes of the raid, form a judgment thereon and take disciplinary measures against the miners if they came to the conclusion that the latter were in the wrong. Surely, a person may not be convicted of participation in a criminal conspiracy because he fails to set himself up as a court of justice to try and discipline persons who are claimed to have violated the criminal law.

The Court below said (258 Fed. 840, 841):

> "There was not a word of criticism by the United Mine Workers of America—no suggestion of discipline; on the other hand, strike benefits were paid, pensions allowed, court costs assumed, and every act committed by

these members of the district and local organizations approved by the entire organization."

With due respect to the Court below, this statement, as it seems to us, is both confused and inaccurate. The court confuses the international or national organization with the district organization. It is not accurate to say that strike benefits were paid or pensions allowed or court costs assumed by the International Association. They were not. We also submit that it is not accurate to say that every act committed by these members of the district and local organizations was approved by the entire organization.

The testimony is undisputed that the International Association had nothing whatever to do with the Prairie Creek so-called strike, that no funds were paid by the International Association for the strike, that the sanction of the International Executive Board before the strike was neither asked nor given, and that no action of the International Association was taken which sanctioned the strike, and there is no basis for holding that either the strikers themselves, or the local unions, or District 21, were agents of the International Association in connection with the strike, or the acts alleged to have been committed in connection with it. The members of the International Association did not become liable for any illegal acts or neglect of any persons connected with the local unions.

The point seems to be that after the disturbance took place at these mines in Arkansas on April 6, 1914, there was some duty on the part of the In-

ternational Association to take control of the situation. But how was this duty imposed? Where is the source of it to be found? In contract? The members of the International Association had contracted for the exact opposite and had limited their responsibility accordingly. What conduct of anybody made it the duty of the International Association or its officers to assume the responsibility—which in their constitution they declined to assume? The question is not what the defendants in error think would have been a sound policy, or what any judge or court might regard as a good policy, or what any group of citizens might favor. The United Mine Workers of America and its members might have concluded, and it was their privilege so to conclude, that the attainment of the lawful objects of the organization could best be achieved by not having the association committed to the direction and control of all local strikes. They were not bound to adopt a policy of responsibility for everything that might happen locally. As the Lord Chancellor said in the *Denaby* case:

> "If one branch were able without control to call out its members on strike in consequence of a local dispute and to claim the financial support of the entire association as a matter of right, then the caprice or selfishness of a few men might dissipate the funds of all." ((1906) A.C. p. 390.)

Of course, as the Lord Chancellor added (*id.*, p. 391), if the local members have a "quarrel with the employers about the conditions of their services they have a right to strike." But they have no right to embroil the general association. And in this case it is the point of the agreement between the members of the International Associa-

tion that this shall be avoided. Working-men, as well as others, can define the limitations of their engagements and the scope of the conduct which they will authorize on their behalf, and it is for the courts to recognize these limitations when lawfully made.

Putting aside this so-called "duty" to take control, which was not taken, there is nothing to go upon in asserting liability. There was no affirmative conduct on the part of the association to make them liable. The basis of the claim of the defendants in error is not found in what the International Association did, but in what it is said it did not do. But the abstention from action was directly in the line of the contract of the members with each other, and it was an abstention which, from the standpoint of the law, was entirely within their privilege.

Reference is made to individual utterances which, it is said, express approval of what had been done in Arkansas. In the first place, these expressions evidently proceeded in the view that the miners had been attacked, were grievously wronged and were acting in self-defense. These individual expressions could not impose liability upon the United Mine Workers of America. Nor did the fact that they appear in the Miners' Journal upon which the defendants in error have laid much stress, since it is called the "official journal" of the Association, operate to create a legal liability for that which the Association had not authorized or sanctioned. The Journal had no authority to alter the terms of the constitution or, under the constitution, to sanction that which the Association had not sanctioned. It was not an "official organ" for any such purpose. Its expressions were based upon its conception of the

facts and dealt, for the most part, with the causes of the outbreak and the provocation of the men. From any point of view, its expressions are entirely without legal significance so far as this controversy is concerned. And, of course, articles contributed to the Journal by persons who had no authority to speak for the Association are not of any importance one way or the other.

The defendants in error also refer to statements made by President White before the International Executive Board at its meeting on May 4, 1914, at Kansas City. (Transcript, p. 2390.) But President White's statement was a mere reference to what had occurred locally, on the responsibility of those locally concerned, and his statement did not change the character of that action, or the Association's relation to it; and, what is more important, the International Executive Board took no action sanctioning the occurrences described.

There is also the statement of President White before the International Executive Board at its meeting on November 30, 1914, which was of the same general import and had no different effect. The International Executive Board did not at that time sanction the strikes or acts in question. It also appears, from the way in which the matter was brought up, that the International Executive Board did not consider that under the constitution the Association had any responsibility for what had been done. This is implicit in the statements themselves. Of course, President White had no authority to bind this Association by any sanction of that conduct and did not.

President White's long speech to the convention of District 21 on May 18, 1914, carries the matter no further. It affords not the slightest basis for

any finding against the International Association (*id.*, pp. 1135, 1144).

We then come to the report of President White in the biennial convention of the International Association of 1916 with respect to litigation, including litigation in Arkansas. Reference is made to the general statement in this report as to the defending of "our people from persecution and in protecting the organization's financial resources," and it is said that "we will press on vigorously opposing under all circumstances any attempt to throttle organization by such illegal methods. We will fight to the utmost at all times to defend our persecuted fellowworkers who are the innocent victims of powerful interests which would destroy the right of men of labor to organize and enjoy the benefits thereof" (*id.*, pp. 2426, 2427). It appears that this report was referred by the convention to a special committee on officers' reports which reported it back to the convention with a recommendation of adoption, and that this followed without dissent (*id.* p. 2427.) So far as this report, in respect to litigation, can be deemed to have reference to the present action, or the attempt to make the International Association responsible for the acts in question, we submit that the President was wholly justified "in protecting the organization's financial resources" from such an unjustified assault. So far as it relates to persecution, the President's report evidently referred to the defense of those believed to be innocent and every delegate who voted for the adoption of the report had a right to believe that this was its meaning. This furnishes no basis for committing the Association to a liability for conduct in which it in no way participated. It may be added that it was not the International Association but Dis-

trict 21 which paid the court costs incurred in the Arkansas proceedings against the men engaged in the strike.

We submit that the case with respect to the International Association, the United Mine Workers of America, is entirely barren of any basis for the recovery.

IV. Notwithstanding the provisions of the constitution of the International Association, and notwithstanding that it did not authorize, participate in or sanction either the "strike" or the alleged wrongful acts in Arkansas, liability has been predicated in the view that these acts in Arkansas were committed in carrying out the "aims, objects and purposes" of the national organization.

Such a view, we submit, is wholly without warrant and is based upon a misconstruction of the policy of the Association.

The argument with respect to the "aims, objects and purposes" of the National or International organization appears to be of this sort: That it was the policy or purpose of the Association to prevent the mining of coal by non-union men, and that hence if there was illegal conduct in Arkansas which tended to prevent the mining of coal by non-union men, that conduct was in pursuance of the policy and purpose of the International Association.

The defect in this argumentation is obvious. If it were the policy and purpose of the Association to prevent the mining of coal by non-union men, this could not be taken to be, without proof, a policy or purpose to prevent the mining of coal by non-union men by illegal acts or through the destruction of property and acts of violence. Such a distortion of a lawful to an unlawful purpose requires evidence, and that evidence is lacking.

So far as the International Association is concerned, and taking the evidence of the agreement, or of action which on any principle of law could be held binding upon the Association and thus upon all its members, it is apparent that the policy of the Association which has thus been misdescribed and distorted was simply the policy of extending its membership and establishing local unions.

The preamble of the constitution of the International Association states:

> "Believing that those whose lot it is to toil in the earth's recesses, surrounded by peculiar dangers and deprived of sunlight and pure air, producing the commodity which makes possible the world's progress, are entitled to protection and the full social value of their product, we have formed 'The United Mine Workers of America' for the purpose of establishing by lawful means the principles embraced in the body of this constitution."

The objects of the Association, as we have seen, are entirely consonant with this statement and with the law. (See, *ante*, pp. 94-97).

When in the conferences between the operators and the miners and in the conventions, there is allusion to the policy of "unionizing" mines, it is perfectly plain that what is meant is the increase of the membership of the order so that all miners should become members. Will any one say this is not a lawful policy which may be executed by lawful means? To repeat what is said in *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S., 418, 439; the law "recognizes the right of workingmen to unite and to invite others to join their ranks, thereby making available the strength, influence and power that come from such association."

Was not the Association entitled to endeavor to persuade miners wherever they were at work to form local unions and thus to have the mines "unionized."

It does not change the fact or the legality of the purpose to describe the policy as one "to prevent the mining of coal by non-union mines." For what are the means of prevention. If non-union men become union men, or local unions are formed and mines become "unionized" so that they are not operated by non-union men, the consequence may be that the coal will not be mined by non-union men, and this consequence may be brought about in the execution of a purpose actually lawful and believed to be laudable, and by means which neither the common law nor statute condemns.

To assert that it is the policy of the International Association to "unionize" the mines, and then taking this to mean, because of the consequence of the successful prosecution of the policy, the prevention of the mining of coal by non-union men, and then to jump to the conclusion that this imports a resort to unlawful means, or acts of violence and the destruction of property, in order to prevent the mining of coal by non-union men, is to pursue a course of reasoning which should have no countenance in a court of justice. If the true and lawful purpose which can be executed by legal means, the purpose to which the members of this International Association have agreed and which they have formally set forth, has by any action of the Association been converted into an unlawful purpose, then it was necessary to establish that fact by competent proof. But it is this proof, by any competent evidence, that the defendants in error have failed to produce. The

statement, therefore, that the aims, purposes or policies of the association were other than those lawful purposes and policies stated in the constitution is unjustified. And, hence, when the Court below rested its decision sustaining the judgment on the theory that the alleged wrongs in Arkansas were committed in pursuance of a purpose or policy of the International Association, it reasoned from a premise which, we submit, it had no right whatever to adopt.

The true view of the evidence, as we conceive it, is that the International Association, the United Mine Workers of America, was organized lawfully for a lawful purpose; that its members had authorized nothing else; that they did not authorize or participate in the "strike" in Arkansas; that they did not authorize, or participate in, or sanction the alleged wrongful acts there committed. And it necessarily follows that there was no ground for holding the members of the Association and their funds liable in this action.

FOURTH.—The verdict is also unsustainable with respect to District 21.

It is unnecessary to review again the principles and the applicable authorities. Entirely apart from the relation of the district to the "strike," the officers of the district were without authority to bind the membership of the district organization, the miners of Texas, Oklahoma and Arkansas, so as to impose liability for the alleged illegal acts in which the members had not participated. And the same is true with respect to the local unions so far as their members had not authorized the acts in question.

FIFTH.—The facts proved at the trial did not justify a recovery against any of the defendants under the Sherman Anti-Trust Act. There was no proof of any combination or conspiracy in restraint of interstate commerce.

The action was brought on the theory, and can be sustained only upon the theory, that damages had been caused by conduct in violation of the Anti-Trust Act. The cause of action was based on Section 7 of that Act. This Act of Congress gives no jurisdiction to the Federal Court over trespasses to property, over assaults or injuries of any sort, unless these wrongs are committed in pursuance of a combination or conspiracy in restraint of interstate commerce. It is the direct relation to interstate commerce that makes the statute applicable.

But, we submit, nothing is shown in this case having that direct relation to interstate commerce which warranted a recovery.

The alleged injuries.

This action is to recover damages for particular acts alleged to have been committed by certain individuals in Arkansas. What were these acts? Without now going into the questions which were contested at the trial, with respect to provocation and incitement, the most that can be said from the standpoint of the defendants in error, is that certain individuals committed trespasses and destroyed property thus inflicting the damage sought to be recovered.

We start then with these individuals. Certainly, it cannot be said that their conduct, separately considered, had any such direct relation to interstate commerce as would justify an action against

them under the provisions of the Sherman Anti-Trust Act. The fact that a factory or a mine produces commodities, which are the subject of interstate trade, of course does not make the destruction of the factory or mine a matter of Federal cognizance under the commerce clause of the Federal Constitution. If it were otherwise, any act that injured any property which had any part in producing anything that could or would have gone into the channels of interstate trade could be the subject of exclusive legislation by Congress. Such a proposition, manifestly, is not arguable.

Again, if it were assumed for the sake of argument, that several persons combined to impair or destroy a factory or mine at which commodities were produced which would go in interstate commerce, still that fact alone would not support a finding of a combination or conspiracy in restraint of interstate commerce. The fundamental question, recognized as of vital importance in the exercise of the important jurisdiction of this Court in defining the scope of the commerce clause and the validity and application of legislation under that clause, is whether the conduct sought to be regulated has *direct* or *indirect* relation to interstate commerce. Were it not for this test of "direct" or "indirect" relation, the Court would be at sea without chart or compass. If whatever may be deemed to have an indirect or consequential relation to, or effect upon, interstate commerce was regarded as being within the commerce clause, it would be difficult to find any activity of importance in any community that fell without it. Such a construction of the Constitution would destroy the Constitution itself. Difficult as may be the application of the test in certain cases,

there is no difficulty in apprehending the test itself. To hold that merely because a mine produces coal, which if produced and sold would enter into interstate commerce, an injury to the mine is interference with interstate commerce cognizable by Congress, is to ignore the distinction which underlies countless decisions of this Court and to establish a centralized power in the Federal Government which would know no limitation with respect to all the activities which precede interstate commerce,—activities not only relating to production but to all the manifold affairs which affect the productive capacity of human beings.

Referring to the Anti-Trust Act, this Court said in *Hopkins* v. *United States,* 171 U. S. 578, 592:

> "To treat as condemned by the act all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased would enlarge the application of the act far beyond the fair meaning of the language used. There must be some direct and immediate effect upon interstate commerce in order to come within the act."

In *United States* v. *Patten,* 187 Fed. 664, 671, the Circuit Court said:

> "Let us test the strength of the government's contentions in the application. A general strike among employees in cotton mills might cause manufacturers 'wholly to close and cease to operate their several factories.' As a result interstate shipments of cotton would be curtailed, but such a combination would fall far short of that denounced in *Loewe* v. *Lawlor, supra.* A conspiracy

> among 'night riders' to burn tobacco warehouses might, if carried out, increase prices and would almost 'unavoidably and necessarily' diminish the volume of possible interstate shipments. Still such a conspiracy would be left to the States for punishment. The direct result would be injury to the warehouse owners. The effect upon interstate commerce would be incidental and indirect."

It is true that the judgment in that case was reversed by this Court, but the correctness of the application of the law by the learned Circuit Judge to the illustrative cases cited by him was not questioned.

In the same case, this Court said (226 U. S. 525, 542):

> "Of course the statute does not apply where the trade or commerce affected is purely intrastate. Neither does it apply, as this court often has held, where the trade or commerce affected is interstate, unless the effect thereon is direct, not merely indirect. But no difficulty is encountered in applying these tests in the present case when its salient features are kept in view."

Manufacture is not interstate commerce. Manufacture is not an instrumentality of interstate commerce. Manufacture is an activity preceding interstate commerce. And the regulation of interstate commerce does not embrace the regulation of manufacture within the States.

The same is true of the production of coal. The mining of coal is not interstate commerce and a mine is not an instrumentality of interstate commerce.

As was said in *Kidd* v. *Pearson*, 128 U. S. 1, 21:

"If it be held that the term includes the regulation of all such manufacturers as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are and must be, local in all the details of their successful management."

So this court has decided that the fact that an article was manufactured for export to another State does not of itself make it an article of interstate commerce within the meaning of the Constitution.

Coe v. *Errol*, 116 U. S. 517.

And the fact that a commodity might come into interstate commerce does not preclude the exercise of the police power of the State so as to prevent its manufacture, if such prevention is otherwise within the police power of the state.

Kidd v. *Pearson*, 128 U. S. 1.

An injury to a miner in mining coal is not an injury to interstate commerce and is not an injury to an instrumentality of interstate commerce. It is an injury which, of course, is the subject of proper cognizance by the courts of local jurisdiction, but is not an injury as to which Congress, under our Federal system, has authority to legislate.

Thus, in *Delaware, Lackawanna & Western R. R. Co.* v. *Yurkonis*, 238 U. S., 439, 444, where a question was raised with respect to the application of the Federal Employers' Liability Act, this Court said:

> "The averments of the complaint as to the manner of the receiving of the injury by plaintiff showed conclusively that it did not occur in interstate commerce. The mere fact that the coal might be or was intended to be used in the conduct of interstate commerce after the same was mined and transported did not make the injury one received by the plaintiff while he was engaged in interstate commerce. The injury happening when plaintiff was preparing to mine the coal was not an injury happening in interstate commerce, and the defendant was not then carrying on interstate commerce, facts essential to recovery under the Employers' Liability Act."

And in *Hammer* v. *Dagenhart*, 247 U. S., 251, 272, this Court said:

> "The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce, make their production a part thereof. *Delaware, Lackawanna & Western R. R. Co.* v. *Yurkonis*, 238 U. S., 439.

> "Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation."

We have understood that the point of the dissenting opinion in the *Hammer* case was not opposition to the principle thus declared, but that Congress had authority to exclude from interstate commerce the products which it conceived should not be allowed to enter into interstate commerce, and that, hence, the regulation in question was a regulation not of production but of interstate commerce with respect to articles produced. But here we are not concerned with any distinction of that sort and we refer to it only to indicate that we do not understand that the dissent in the *Hammer* case was intended to detract from the force of the decisions that production is not commerce and that injuries to production are not of themselves the subject of Federal cognizance as constituting interference with interstate commerce.

So far, then, as the evidence and arguments in this case are addressed merely to production, to the mining of coal, to injuries to property in Arkansas used for the purpose of mining coal, it would seem to be perfectly clear that the mere fact of the destruction of property, or of interference with production or mining through such destruction, would not present any question under the Federal Anti-Trust Act, whether the alleged wrong was committed by one man or a hundred men.

The *gravamen* of this action is not interference with production, or a combination to interfere with production, or a combination for the purpose of establishing conditions of production, but a com-

bination or conspiracy in restraint of interstate commerce. That is the vital matter, and a prosecution under the Anti-Trust Act, or an action such as this for treble damages does not get under way by averments of interference with production of or injury to property used in production, or of any combination to inflict such an injury.

The question is as to a combination or conspiracy in restraint of interstate commerce, and that question is presented with respect to the various persons and groups of persons here involved.

(1) The individuals who, it is asserted, committed the alleged wrongs.

It only requires a reference to the actual occurrences to dispose of any contention that these individuals were engaged in a combination that had any direct relation to interstate commerce, if the well settled distinction between production and interstate commerce is not entirely ignored.

As already stated, the Dallas mine had been closed down for two years. The Prairie Creek and Mammoth Vein mines were shut down in March, 1914. The effort was made to start the Prairie Creek mine as a non-union mine. It is apparent that, putting aside the provocation that the men had by reason of the action of the manager of the mines and the guards employed by him, and assuming for the purpose of argument that the injuries were inflicted to prevent the mining of coal with non-union labor, still the miners in the locality had not the slightest intent to deal with or interfere with interstate commerce. Their thought, if the testimony introduced by the defendants in error be accepted, was on mining and the men who were mining and the conditions of work. It was not upon commerce, but

on production. If it be assumed that the purpose was to prevent certain men, non-union men, from working, it was still the prevention of work by these men that they had in mind. The declarations of individuals which were introduced in evidence by the defendants in error wholly fail to establish the cause of action alleged, and on the contrary demonstrate that the individuals concerned were dealing exclusively with production. The statements "we are not going to let them dig coal", and "we are going to clean those scabs out that was working there", are as strong as any and confirm the point.

A finding that the union miners at these mines in Arkansas constituted a combination or conspiracy in restraint of interstate commerce, we submit, would be in violent disregard of the proof and the law. Of course, a finding of conspiracy or combination in restraint of interstate commerce, that being the gist of the action, must be supported by proper and convincing proof, the sort of proof that will sustain a criminal prosecution or an action for treble damages. This being the very foundation of the action, the conspiracy in restraint of interstate commerce must be established as a fact over and above any and all evidence of injury to property used in production, or of intent to injure such property, or of combination for that purpose. It is clear that there is no such proof here.

To put it in another way, if the evidence in this case, so far as the wrongs alleged to have been committed in the destruction of property by these individuals in Arkansas are concerned, could be treated as sufficient basis for a finding that the individuals who committed the wrongs were engaged in a conspiracy or combination in restraint

of interstate commerce, then there would be no strike in any factory in the United States, in connection with which acts of violence were committed, but would afford ground for a suit under the Federal Anti-Trust Act. Such a view would subvert the entire jurisprudence of the States as to the protection of persons and property and would create a Federal domination without any discernible limit.

(2) The United Mine Workers of America.

In order to justify a recovery against the United Mine Workers of America, the International Association, under Section 7 of the Anti-Trust Act, it was necessary to show (1) that this Association constituted, or was engaged in, a conspiracy or combination in restraint of interstate commerce, and (2) that this conspiracy or combination had caused the damage alleged.

It is at once apparent that the second requirement has not been met, as the International Association did not authorize or sanction the alleged wrongful acts inflicting the damage in question. What has already been said upon this point (see, *ante*, pp. 116-122), need not be repeated. For this reason, aside from others, the case under Section 7 as against the International Association falls to the ground.

It is also clear that a recovery against the International Association in the view that it constituted, or was engaged in, a conspiracy or combination in restraint of interstate commerce, was without foundation.

The International Association was formed by agreement. The objects, and the authority con-

ferred upon the representatives of members to attain these objects, were defined by the agreement of membership. These objects were lawful and the authority conferred was entirely legitimate.

The objects of the Association were thus stated (Constitution, United Mine Workers of America, Transcript, p. 419):

> "First: To unite in one organization, regardless of creed, color or nationality, all workmen eligible for membership employed in and around coal mines, coal washers and coke ovens on the American Continent.
>
> "Second: To increase the wages, and improve the conditions of employment of our members by legislation, conciliation, joint agreements or strikes.
>
> "Third: To demand that not more than eight hours from bank to bank in each twenty-four hours shall be worked by members of our organization.
>
> "Fourth: To strive for a minimum wage scale for all members of our craft.
>
> "Fifth: To provide for the education of our children by lawfully prohibiting their employment until they have at least reached sixteen years of age.
>
> "Sixth: To secure equitable statutory old age pension and workmen's compensation laws.
>
> "Seventh: To enforce existing just laws and to secure the repeal of those which are unjust.
>
> "Eighth: To secure by legislative enactment, laws protecting the limbs, lives and health of our members; establishing our right to organize; prohibiting the use of deception to secure strike breakers; preventing the employment of privately armed guards during labor disputes; and such other legislation as will be beneficial to the members of our craft."

Not only are these objects lawful, but they cannot be regarded as having direct relation to interstate commerce, in the light of the established principles to which we have referred. These objects relate to conditions of work, to employment in production. The fact that they relate to employment in production in many mines, or to mines in several States, does not alter their essential character. The miners have no direct relation to transportation or sale of coal in interstate commerce. The miners are through with their work when they produce the coal, and the fact that they desire better wages, or fewer hours, or improved conditions in mining coal, does not relate their aim or their work to interstate commerce in any direct way. And the legal and constitutional aspect of the matter is precisely the same with respect to work in mines in a dozen States, as it is with respect to work in one mine.

It may be said that the constitution of the International Association contemplated strikes, as these might be authorized and sanctioned by that Association, although the strike in question was not so authorized and sanctioned. But a strike, as such, in a mine, or in a factory, while it may affect production, has no direct relation, as a mere strike, to interstate commerce. The constitution of the International Association, in its provisions relating to strikes, said nothing of boycotts or of anything having direct relation to trade, interstate or otherwise.

Again, the effort to "unionize" does not imply any conduct having direct relation to interstate commerce. A mine is "unionized" when union men are employed as miners. Take, for example, the case of a single mine. Suppose, at the X mine

in the State of Pennsylvania, a local union was formed for the purpose of improving conditions of labor at the mine, and that it was the avowed purpose of the union to bring about a condition in which the work done at the mine should be done by members of the union who had similar views with regard to fair and proper conditions of work. Will anyone say that this would be a combination in restraint of interstate commerce because the coal produced at the mine would go into interstate commerce? Would it be contended that if there were a strike at the mine because the men were dissatisfied with labor conditions, or even because non-union men were employd in mining the coal, that this concerted refusal to work constituted a combination or conspiracy in restraint of interstate commerce. If "unionizing" or the policy of "unionizing" established restraint of interstate commerce, then the Sherman Anti-Trust Act would apply just as well to a group of men at a single mine in one State as to any other group devoting their efforts to improving labor conditions in a number of mines in many States. It is apparent that the number of instances involving the same policy does not affect the nature of that policy in relation to interstate commerce, and it is necessary to find something more than the mere policy of "unionizing", or of strikes, or of refusal to work with non-union men, or of refusal to mine coal with non-union men, in order to create a combination or conspiracy in restraint of interstate commerce.

It will not do to say that because, conceivably, particular acts *may* be done in pursuance of a conspiracy or combination in restraint of interstate commerce, that they have been done in pursuance of such conspiracy or combination, and where the

acts themselves, as in this case, have no direct relation to interstate commerce, the acts in themselves furnish no evidence whatever of intent to interfere with interstate commerce. It is necessary to find, on sufficient evidence, that a conspiracy or combination of the sort which the statute condemns exists or the particular acts are entirely outside the purview of the statute.

We have already called attention to the broad way in which the expression "prevention of the mining of coal by non-union men" has been used in this case. It has been used below as if this necessarily was an illegal purpose, and not only that, but a purpose in contravention of the Sherman Anti-Trust Act. As we view it, it is neither.

The prevention of the mining of coal by non-union men may, of course, be brought about by "unionizing" a mine, that is by establishing a local union and increasing the members so that it embraces all those employed in mining at that mine. This, obviously, can be accomplished by entirely lawful means, and we have always understood that illegal purpose or illegality of means was not to be presupposed but required proof. Apart from this, the prevention of mining coal by non-union men, as such, is not an interference with interstate commerce in the proper sense. When the intent and purpose have relation simply to hours, wages and conditions of production, the agreement or combination relates to production and not to interstate commerce, the effect of the latter, if it exists, being merely incidental. We need not again review the authorities which we have submitted upon this point.

It is, therefore, not enough to assert that the International Association had hundreds of thousands of miners in many States, or that its objects

embraced labor conditions in many States, or that it sought to "unionize" mines. The essential element in the present cause of action is still lacking.

The question, then, is whether outside the declared purposes of the Association, outside of the terms of the formal agreement of its members with each other, and outside the so-called policy of "unionizing" mines, there is proof to justify a criminal prosecution or an action for treble damages against this Association and all its members upon the ground that as an Association they are engaged in a conspiracy or combination in restraint of interstate commerce. We cannot understand how the evidence in this case may be regarded as supporting any such view.

Much has been made by the defendants in error of conferences between representatives of operators and representatives of miners with respect to wage scales, hours and other conditions of labor. Preliminarily, it may be noted that there is no policy more in accord with the public interest than that there should be fair bargaining between representatives of mine owners and representatives of miners, and that agreements should be reached after negotiation and debate. If this course does not promise to some extent a solution of difficulties which confront the country, it would be difficult to suggest what course would hold that promise. But, certainly, if any one objects to such a procedure of fair bargaining, he certainly finds no ground for translating his objection into a criminal prosecution, or an action for treble damages, under any law of the United States. Instead of opposing such procedure, the Clayton Act, in substance, recognizes it, and when the Nation was in the throes of its stupendous ef-

fort to win the War, this policy was enforced as an essential requirement in order to maintain the safety of the country.

The mere fact of conference between operators and miners, and the agreements for wages, etc., which were reached, we must assume to be unobjectionable. There has been no finding that the operators and the miners entered into a conspiracy in restraint of interstate commerce. Plainly, the District Court thought nothing of that suggestion (Transcript, p. 3187), and the defendants in error did not join the operators as defendants in the view that there was a country-wide conspiracy and attempt thus to secure, on their theory of the law, additional paymasters of ample ability to satisfy their judgment.

Passing this, statements in speeches made at these conferences have been introduced for the purpose of showing that there was a conspiracy or combination, in which the International Association was engaged, in restraint of interstate commerce. It occurs at once to the mind that this sort of evidence is a very frail reliance when it is sought to hold hundreds of thousands of members of an Association, with expressed purposes which are entirely lawful and laudable, as being guilty of a violation of the criminal law. It is true that the individuals at these conferences were representatives or delegates, but it would be a very wide conclusion to say that this meant that all the members were bound by anything a delegate in the heat of controversy might say. Such a conclusion could not be supported. The speeches at these conferences, made by operators and miners, were made by men in the contests of negotiation, in the midst of bargaining, using every appeal and argument in order to gain their

respective points. It is perfectly idle, we submit, to attempt to make the miners throughout the country criminals by virtue of such evidence.

But if these utterances are examined, they fall far short of showing the intent and purposes which are here ascribed. The point particularly stressed by the defendants in error is that allusion was frequently made to competition between union mines and non-union mines. This was undoubtedly advanced by the operators as a reason for refusing to meet the demands of the miners; and, of course, being so advanced, it was discussed by the miners. It was, as one of the operators said, "a horse-trading proposition." It is evident that the miners thought that the operators were overstating their point and that they did not suffer to the extent alleged. It should also be noted that these various statements refer to the competition with West Virginia, which has nothing to do with this case. There is nothing to show that there had been any apprehension that the Arkansas mines would become unorganized or that there was any consideration whatever of such an exigency. But, apart from this, there is no suggestion in these utterances fairly interpreted of any action or of any conspiracy or combination in restraint of interstate commerce. The most that was suggested was an effort on the part of the miners to "unionize" the mines, that is, an effort directed at an establishment of local unions, at an increase of membership and at conditions of production in particular places. We have, in the opening statement, reviewed at length these utterances, and it would unduly extend this argument to detail them here. Perhaps the most extreme utterance was that of Mr. Thomas L. Lewis at a conference nearly twenty years ago (Tran-

script, p. 2356), where reference was made to the wiping out of competition. Mr. Thomas L. Lewis had no authority to bind the members of this Association by any such suggestion. But what Mr. Lewis said must be taken in its entirety. He not only did not refer to any unlawful means, but what he did mean, so far as the miners were concerned, he explicitly stated. He said, "What is necessary to do this? Organize our forces in the competing fields so far as the United Mine Workers are concerned." That is, on any fair construction and taking the circumstances into consideration, it appears in answer to the constant plea of the operators that they were suffering from competition of non-union mines, Mr. Lewis said that it was for the miners to do their best to establish local unions and to secure the adherence of local miners, and thus to increase their membership by "unionizing" the mines.

The utterances in articles appearing in the Miners' Journal and the various individual expressions which have been read into this record, go no further. When it is found that so far as the particular acts here in question are concerned, the International Association did not authorize them or sanction them, that those concerned were proceeding on their own responsibility, when it is ascertained that this Association had announced and the agreement between its members contemplated entirely legitimate objects and policies which were not concerned with interstate commerce, upon what ground can it be maintained on any fair review of the evidence that the Association was engaged in a combination or conspiracy in restraint of interstate commerce and, therefore, liable for the damage caused by such acts?

It seems clear to us that the Circuit Court of Appeals proceeded upon an erroneous view of the fundamental principle involved and upon a mistaken theory as to the import of the decisions of this court. The question was considered by the Circuit Court of Appeals on the first writ of error in this case, which was sued out by these defendants in error from the judgment of the demurrer (*Dowd* v. *United Mine Workers of America*, 235 Fed. 1). The District Court had very properly sustained the demurrer, holding that the Court had no jurisdiction of the cause of action upon the ground "*that the acts of the defendants complained of were not an interference with interstate commerce, or a violation of the Federal Statute upon which the complaint is predicated*" (Transcript, p. 159).

The Circuit Court of Appeals, in dealing with this question, said (235 Fed. p. 8):

> "It is next objected that the alleged wrongs of the defendants do not constitute an interference with interstate trade or commerce. We do not think, since the case of *Loewe* v. *Lawlor*, 208 U. S. 274, 28 Sup. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815, and *Lawlor* v. *Loewe*, 235 U. S. 522, 35 Sup. Ct. 170, 59 L. Ed. 341, it can be said that this can be considered an open question. In rendering the opinion of the Supreme Court when the case was last before it, Justice Holmes said:
>
> 'The substance of the charge is that the plaintiffs were hat manufacturers who employed non-union labor; that the defendants were members of the United Hatters of North America and also of the American Federation of Labor; that, in pursuance of a general scheme to unionize the labor employed by the manufacturers of fur hats (a

purpose previously made effective against all but a few manufacturers), the defendants and other members of the United Hatters caused the American Federation of Labor to declare a boycott against the plaintiffs, and against all hats sold by the plaintiffs to dealers in other states and against dealers who should deal in them; and that they carried out their plan with such success that they have restrained or destroyed the plaintiff's commerce with other states.' "

The basis, then, of the decision of the Court below, upon this fundamental question of the liability under the Act, was that the question had been determined by the decisions of this Court in *Loewe* v. *Lawlor* and *Lawlor* v. *Loewe* (*supra*).

This, however, it seems to us, was a fundamental error. The foundation of the decisions in the *Loewe* cases is wanting here. This is clear from the above quotation from the opinion in the second *Loewe* decision (235 U. S. 522, 533), where the object of the conspiracy there found, in its relation to interstate commerce, is definitely stated. It was not simply the "unionization" of labor employed by manufacturers of hats, an object which could not only be accomplished by lawful means, but could be sought and attained without any conduct that could be deemed to have direct relation to interstate commerce. The point of the decision was that in pursuance of the general scheme to unonize, "the defendants and other members of the United Hatters caused the American Federation of Labor *to declare a boycott against the plaintiffs, and against all hats sold by the plaintiffs to dealers in other States and against dealers who should deal in them; and that they carried out their plan with such success*

that they have restrained or destroyed the plaintiffs' commerce with other States." The ground of the decision was a boycott of interstate commerce. There is no boycott of interstate commerce here. And the *Loewe* cases, we submit, are wholly without application here. If the Court below had clearly defined the distinction between *production,* and conduct relating to production, on the one hand, and interstate commerce, and conduct directly relating to interstate commerce, on the other hand, this case would have been halted at its inception.

We submit that the District Court was right and the Court of Appeals wrong. The third amended complaint, which was put in after the decision upon the demurrer, did not alter the cause of action in this respect. And if the complaint could possibly be regarded as containing allegations which properly invoke the statute, the evidence certainly fails to sustain them, and at the close of the case the action should have been dismissed, or a verdict directed in favor of the plaintiffs in error, that is, the defendants below.

3. The local unions and District 21.

There is nothing to show that these groups had engaged in any combination or conspiracy in restraint of interstate commerce. The reasoning that we have employed above, also applies to these associations.

SIXTH.—The District Court erred in its instructions to the jury.

The District Court in denying the motion for a direction of a verdict, had shown that it entertained an erroneous view of the principle determining responsibility of the United Mine Workers of America. That view was, in substance, that if the United Mine Workers of America did not intervene to prevent the alleged unlawful acts committed in Arkansas, the United Mine Workers of America, as an Association, was liable for the damages caused by destruction of property or acts of violence, despite the fact that it appeared from the evidence that the strike in question had not been authorized or sanctioned by the United Mine Workers of America. (See Statement of the Court in its Memorandum on motion for a directed verdict, Transcript, pp. 3183-3185.) It was virtually impossible for the court with this view of controlling principle to give to the jury an adequate understanding of the grounds on which liability of the International Association, the United Mine Workers of America, should be determined. And, we submit, that the charge as given, to which exception was taken, (*id.* pp. 3220-3221) did not properly or adequately state these grounds. (*id.* pp. 3188-3220).

The jury did not understand what rule was to be applied, as appears from their request for further instructions (*id.* pp. 3233-3234) and the colloquy between court and jury, which concluded as follows: (*id.* p. 3234)

"Juror Calhoun: Would the United Mine Workers as a whole be responsible for the act

of a private individual that is in this company, or that is, is the United Mine Workers responsible for the act of a private member that is in this company, that is not a leader?

"The Court: Oh, no, no, sir; not as a matter of law. It must be the act performed by the association, its individual members, local or district, or members carrying out the purpose of the unlawful agreement.

"Juror Johnson: You said where two or more were implicated in this and done it, the whole union is responsible?

"The Court: Yes, if they are carrying out the purposes. Gentlemen, I cannot discuss this with you. It would render your verdict void if I did.

"Juror Morrow: I don't know whether that question can be answered or not, but that has been the puzzling question between several of us whether these fees, lawyer fees and doctor bills were paid by the union——

'The Court: Gentlemen, that is a fact that you will have to settle. I think the court has gone as far as it should and perhaps further than is necessary. You are excused."

This, we submit cannot be regarded as a satisfactory instruction, and this Court is given power to exercise its corrective jurisdiction without regard to particular exceptions. Judicial Code, Sec. 269, Act of February 26, 1919, 40 Stat. 1181.)

After this colloquy, and after two days deliberation, the court called the jury before it and the following additional instructions were given. (*id.* pp. 3234-3236):

"The Court: Gentlemen, the court understands you have not agreed upon a verdict yet. Is there anything that the court can say to you that will be of help to you now?

"Juror Dunnigan: There is nothing that I know of, Your Honor, not on my part.

"The Court: What seems to be the stumbling block in the way of an agreement?

"Juror Dunnigan: We don't understand the evidence alike; we do not see it alike; we do not agree.

"The Court: Are there any questions that individuals would like to ask the court?

"Juror Dunnigan: None that I know of.

"The Court: Now, Gentlemen of the Jury, that is a pretty serious situation, and I want to say to you that the court has no thought at all of discharging you. You were sworn upon your oaths to do your duty as jurors. In the opinion of the court there is no reason on earth why reasonable men with a due regard for right, and each having due respect and consideration for the other's opinion, should not arrive at a conclusion in this case. What would be a fortune to either of you, or I, has already been spent and a failure to render justice in this and others is what brings the courts into contempt. I say this to you that you may understand the seriousness of your situation. The facts in this case have got to be found by a jury. Another jury will have no better opportunity of knowing what these facts are or be in any better position to determine these facts than you, and it is your duty as jurors under your oaths to get together and return a verdict.

"Now, the Federal Courts recognize the right of this court under these circumstances to say what this court believes in relation to the facts in this case, and you are advised that this court is of the opinion that the facts in this case justify you in the conclusion overwhelmingly that it was the policy and therefore the agreement for years of this national organization to prevent mining of non-union coal for the unlawful purposes named in this complaint that it might not come into competition with union mined coal; that there is no question in this Court's mind but that that

strike was ordered down there for that purpose to prevent the mining of non-union coal in these plaintiffs' mines; that the strike was called by those who were the instrumentality of the greater organization, the general organization, the defendants, and their act was its act, and that they put into motion the force that destroyed this property, and that that force was put into motion for the purpose of preventing the mining of that coal, the shipping of that coal, the running of these mines. Why, this court has not a thought that there would ever have been any trouble there if it had not been for the prevention of the mining of non-union coal. Now, that is the judgment of this court and if it were my duty to decide it I would decide it here. Now, you are not bound by my opinion. I have a right to give you my judgment, however, you are the sole and exclusive judges of the facts and it is for you to determine these issues of fact independent of my judgment and this court believes you ought to determine it and under your oaths as jurors agree upon a verdict.

"If there is any question about the law on the responsibility for this, responsibility of the greater organization, that is for the higher court to say, but you cannot reach it until you have done your duty—you are the stumbling block in the way and this whole time is wasted. Now, after I have said what I have, I am going to say that I have no thought of discharging you, you must return a verdict in this case. You are amply qualified to do the right thing as you see it, and as it should be done and the thought of this court is that no other jury will ever be better prepared to render a verdict than you and to separate without a verdict will be to have rendered all this expense of all this trial for naught—make it necessary to go all over the ground again with no better opportunity on the part of the jury in the box when it has all

been done, to do the right thing than you have now, no advantage—none in the world. You see the importance of the situation and I now urge you with the idea of doing the right thing and putting this matter in that condition that a trial of the case with a legitimate end, in which a verdict of the jury will place it. And with a knowledge and feeling of a responsibility and that that responsibility is with you, that you now return to your jury rooms and bring in a verdict.

"Mr. Grant: May I take an exception to that part of the charge with reference to the great conspiracy and also that part which is to the effect that the organization put that in force.

"The Court: Yes, sir; in the opinion of the court you are entitled to your exception.

"Mr. Grant: I just desire to get an exception.

"The Court: The exception is allowed."

This charge amounted to a peremptory instruction to the jury to return a verdict against the defendants. It was coercive in its tenor and terms. The charge is glossed by the statement that the jury was not bound by the court's opinion, but the context discloses that the expression was a mere form so far as the practical effect of the instruction was concerned. Moreover, the charge was manifestly wrong not only in its facts but in its law.

The court said:

"If there is any question about the law on the responsibility for this, responsibility of the greater organization, that is for the higher court to say, but you cannot reach it until you have done your duty—you are the stumbling block in the way and this whole time is wasted. Now, after I have said what I have, I am going to say that I have no thought of

discharging you, you must return a verdict in this case" (*id.* p. 3236).

This, apart from any question of fact, or of any form of words purporting to leave to the jury a question of fact, told the jury in substance that the court had defined the law of responsibility, that if the court had made a mistake it was for a higher court to correct it, and that it was the duty of the jury to take what the court had said upon this point. This, the jury could not fail to understand, meant that the United Mine Workers of America, upon the evidence, were responsible as a matter of law. As we have said, upon a proper view of the responsibility of such an association, the case should not have been left to the jury at all. It was left to the jury, as the court in substance stated in its decision upon the motion for a direction of a verdict, upon the ground that as matter of law the Association was responsible. This was the effect of the court's instructions to the jury. And this was the view which the court undertook to compel the jury to recognize.

The salutary rule of the Federal Courts, that Judges should not be restrained in expressions with respect to the facts when they faithfully commit the determination of facts to the jury, certainly is not without limitations and should not be invoked, we most earnestly urge, to support an instruction of this character by the District Court.

The court not only told the jury what the court thought of the facts, but virtually told the jury that it was their duty to proceed on the theory that the International Association was responsible.

It was said in the Court below that the exception was insufficient, but we submit that the exception was sufficient, and further that under the

recent amendment of the Judicial Code (cited above) it was the duty of the Court below to remedy the error without regard to the technical character of the exception. And it would seem that the substantial reason why the Court below took a different view is that the Court itself, as we have pointed out, had an erroneous view of the law involved.

There was a strong dissent upon this point in the Court below, the dissenting opinion being delivered by Circuit Judge Hook, and we commend his statement of the rule, and the disregard of it by the District Court in this case, to the attention of this Court. Circuit Judge Hook said (258 Fed., pp. 848-849):

> "The matter under discussion was of vital importance and is well within the above provision. It was not an inadvertence or casual ruling in the progress of the trial, to which specific objection or exception was necessary to inform the court and give it opportunity for correction, but it was a deliberate action, going to the very root of the judgment now under review. In view of the above I will now set forth parts of the charge, the italics being mine:
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> * * * * * * *
>
> "Of course, the court said it was for the jury to determine the facts, and that they were not bound by its opinions, etc.; but are not such expressions wholly futile in the compelling force of the above? There are occasions in which the statement of a principle of law is but an academic formula. Can it reasonably be said, after such a charge, that the jury felt free to exercise their own independent judgment? The question whether the well-established province of a jury is invaded is to be judged by the natural effect of the charge

upon the minds of the jurors. How did they feel about it? Did they feel free to exercise their functions independently, or were they constrained by the intrusion of the personality and power of the judge, and the fear of his displeasure, ridicule, or contempt. In this case they were reminded of their oaths; they were told that they would not be discharged, but had to return a verdict; that there was no reason on earth why they should not agree; that failure to render justice would bring the court into contempt; that there was no question in the mind of the court about the evidence; that it was overwhelmingly one way, meaning against the defendants; and that they were a stumbling block in the way of the final determination of the legal responsibilty for the acts charged. It is regrettable that this incident occurred, for up until that time the case was most admirably and carefully tried."

The instruction of the District Court was not only coercive but erroneous in fact, stating:

> "There is no question in the court's mind but that that strike was ordered down there for that purpose to prevent the mining of non union coal in these plaintiffs' mines; that the strike was called by those who were the instrumentality of the greater organization, the general organization, the defendants, and their act was its act, and that they put into motion the force that destroyed this property."

We submit that this was the most direct invasion of the rights of the plaintiffs in error to have their case properly tried. The strike was not called by the International Association. As to all the mines but the Coronado mines, there was no strike at all but a lockout. There was no riot at the Cor-

onado mines where alone there was a strike; the property destroyed at that mine was destroyed days later under circumstances where the responsibility is not at all well defined. The International Association did not authorize the strike and did not sanction it. We respectfully submit that a verdict procured by such instruction is not a verdict that ought to stand.

The charge went to the extreme of coercion:

> "I am going to say that I have no thought of discharging you, you must return a verdict in this case."

And after emphasizing the duty of the jury and the expense of the trial, the court concluded:

> "You now return to the jury room and bring in a verdict."

We submit that this action of the court requires reversal:

SEVENTH. There was a misjoinder of plaintiffs and their causes of action, the complaint failing to show any community of interest in the plaintiffs or any joint cause of action.

The plaintiffs in this action are nine different corporations, having nine different alleged interests in this litigation.

The Coronado Coal Company was a West Virginia corporation (id., 181), which prior to April 18, 1914, had operated a coal mine near Huntington, in Sebastian County, Arkansas. Buildings at this mine were destroyed by fire on July 20, 1914. We have already referred to the total ab-

sence of any testimony implicating any of the defendants with this fire.

The Denman Coal Company was also a West Virginia corporation (id., 181). Its only interest in this litigation is through the fact that it had leased certain machinery to the Coronado Coal Company (id., 2135, 2137) and other machinery to the Mammoth Vein Coal Company (id., 2248, 2249, 2251).

The Mammoth Vein Coal Company was likewise a West Virginia corporation. Prior to March, 1914, it had operated mines near Prairie Creek, Arkansas. The buildings at Mammoth Vein Mine No. 1 were burned on July 17, 1914, following the "battle" which occurred on that date.

The Bache-Denman Coal Company was also a West Virginia corporation (id., 181). It appears from the record that it owned an unknown amount of stock in the Coronado Coal Company (id., 1999), and there is an intimation that it owned stock in other companies named in the complaint. It had also entered into an agreement with the Rock Island Railroad guaranteeing the fulfillment of a contract for the shipment of coal by the Mammoth Vein Coal Company (id., 2311, 2313). There is evidence that the Railroad had filed a claim against this Company for failure of performance (id., 2334). There is no evidence, however, that the Bache-Denman Company was in any way damaged by reason of this claim or for any other reason.

The Hartford Coal Company was an Oklahoma corporation (id., 181), which about two years prior to the occurrences in question had operated a mine described in the record as the Dallas Mine (id., 1974, 1975). Property at this mine was dam-

aged by fire on July 19, 1914. As to this fire also we have referred to the fact that there is a total absence of proof implicating any of the defendants.

The Sebastian County Coal Company was an Arkansas corporation (id., 181). It had taken a lease on certain coal property in the vicinity of the Coronado Mine, for which it was obliged to pay a royalty, and in turn had sub-let this lease to the Coronado Coal Company at a higher tonnage royalty (id., 1993-4). This lease was cancelled by judicial order for the non-payment of royalties, and it is the contention of defendants in error that the lease would not have been cancelled except for the fire at the Coronado Coal Company mine.

The Mammoth Vein Coal Mining Company was an Arkansas corporation, all the stock of which was held by the Mammoth Vein Coal Company (id., 753). In March, 1914, it had agreed to operate the mines of the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company (id., 182), the said agreement having been made as a part of Bache's plans to carry out the non-union policy which he had determined upon (id., 193).

The Mammoth Vein Royalty Company was also an Arkansas corporation (id., 181). It had leased coal land to the Mammoth Vein Coal Company. It does not appear in what way this company was damaged by the fire at the Mammoth Vein Mine. After this fire the receivers of the Mammoth Vein Royalty Company executed a new lease to another corporation at a higher royalty than was provided for by the lease to the Mammoth Vein Coal Company (id., 2254). It is thus apparent that if the fire at the Mammoth Vein Mine had any effect

upon the Mammoth Vein Royalty Company it was merely to improve its financial condition.

The Prairie Creek Coal Mining Company was an Arkansas corporation (id., 181) which prior to March, 1914, operated coal mines at Prairie Creek, Arkansas. The property at these mines was burned on July 17, 1914, during the "battle" of that day.

From this statement it is apparent that there were four different fires at four different properties, for which damages are sought in this single action not only by the corporations that owned the property destroyed but by the other corporations named in the complaint that had no such interest.

This obvious misjoinder of parties plaintiff and of their causes of action has been raised at every stage of the litigation, by demurrer (id., 207-210), by motion to strike out the names and causes of action of each of the plaintiffs (id., 214-217) by answer (id., 262), and by motion for judgment notwithstanding the verdict (id., 360, 361).

The rule is as old as common law that to entitle plaintiffs to join in an action for damages they must have a joint legal interest in the property affected and in the damages sought to be recovered.

Chitty's Pleadings, Vol. I, p. 64.

In an early decision by this Court, the question arose as to the difference in the practice at common law and admiralty regarding claims for the recovery of seamen's wages. The Court said (*Oliver* v. *Alexander*, 6 Pet. 143, 145):

> "It is well known that every seaman has the right to sue severally for his own wages in the courts of common law; and that joint

> action cannot be maintained in such courts by any number of seamen, for wages accruing under the same shipping articles for the same voyage. The reason is, that the common law will not tolerate a joint action, except by persons who have a joint interest, and upon a joint contract. If the cause of action is several, the suit must be several also."

And in the same decision, referring to the practice in admiralty and under its statutes authorizing such joint libels, the Court points out that even in such cases, the suits remain essentially several in their nature:

> "The whole proceeding, therefore, from the beginning to the end of the suit, though it assumes the form of a joint suit, is in reality, a mere joinder of distinct causes of action by distinct parties, growing out of the same contract, and bears some analogy to the known practice at the common law of consolidating actions against different underwriters, founded upon the same policy of insurance."

See, also,

Yeaton v. *Lenox,* 8 Pet. 123;
Bertrand v. *Byrd,* 5 Ark. 651.
Harris v. *Preston,* 10 Ark. 201.

The rule of common law requiring parties to have a joint interest is fundamental and prevails as well in States, of which Arkansas is one, that have adopted the reform procedure.

Pomeroy on Code Remedies, Sec. 231.

The Arkansas statute is the one generally found in Code States:

"All persons having an interest in the subject of an action, and in obtaining the relief demanded, may be joined as plaintiffs, * * *" (Kirby's Digest, Sec. 6005).

In *Johnson* v. *Dittlinger*, 215 S. W. 694, decided November 17, 1919, by the Arkansas Supreme Court, a number of persons brought a single action to recover sums of money which were due to them individually. The court expressly recognized that there was a misjoinder of parties plaintiff and of causes of action. The court said:

> "The complaint filed before the justice plainly shows a misjoinder of the parties plaintiff and of causes of action, because the witness fees alleged to have been collected by Johnson were not the joint property of the plaintiffs, but each was entitled only to his or her own fee, and neither was entitled to the aggregate amount; therefore, the causes of action, if any, were separate and not joint."

This case clearly shows that there is no warrant in the Arkansas practice for the peculiar procedure which has been adopted in the case at bar. There was manifestly no joint interest between the several companies owning the property that was destroyed.

It is said, however, that if separate actions had been brought, they could have been consolidated by an order of the court, under the Arkansas Consolidation Act (Kirby's Digest, Sec. 6083-a) which is as follows:

> "When causes of action of a like nature or relative to the same question are pending before any of the Circuit or Chancery courts of the State, the court may make such orders and rules concerning the proceedings there-

> in as may be conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice and may consolidate said causes when it appears reasonable to do so."

It is a plain copy of the Federal statute of consolidation which is as follows:

> "When causes of a like nature or relative to the same question are pending before the court of the United States, or of any territory, the court may make such orders and rules concerning proceedings therein as may be conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice and may consolidate said causes when it appears reasonable to do so" (U. S. Rev. Stat., Sec. 921; Jud. Code, Sec 1).

The rule generally prevails that where a State adopts a statute that has been interpreted in other jurisdictions it presumptively adopts the interpretation which has there been accorded it. This would seem to be the more imperative where the statute adopted has operated and determined the practice in courts having concurrent jurisdiction with the courts of the adopting state. The Federal statute has been the subject of express consideration by the Federal courts. Instead of holding that the act authorizes the parties originally to join in bringing a suit, the Federal courts have uniformly held that the right to order consolidation rests wholly in the discretion of the court, a discretion that cannot be coerced by mandamus or reviewed on appeal except in case of grave abuse (*Mutual Life Ins. Co.* v. *Hillmon*, 145 U. S., 285, 292).

What becomes of this discretion if parties may forestall its exercise by making their own consolidation before filing their complaint? In accordance with its manifest purpose, it has been treated as a right which the courts may exercise for the purpose of avoiding delay or unreasonable expense in the administration of justice, but not as conferring a positive right upon parties who seek relief in common law actions. As Judge Lurton has said:

> "Such consolidation is primarily but an expedient for saving costs and delay. Each record is that of an independent suit, except in so far as the evidence in one is, by order of the court, treated as evidence in both. The consolidation does not change the rules of equity pleading, nor the rights of parties, as those rights must still turn on the pleadings, proofs, and proceedings in their respective suits." (*Toledo etc. R. Co.* v. *Continental Trust Co.*, 95 Fed., 497, 506.

In construing the Arkansas Consolidation Act, the courts of that State, however, have declared themselves untrammeled by the interpretation of the Supreme Court of the United States. In *Fidelity-Phenix Ins. Co.* v. *Friedman*, 117 Ark., 71, the question arose as to the challenge accorded the several defendants in a consolidated case, the defendants contending that the rule of the Federal courts under the Act of Congress, which had been adopted by the State, should prevail. But the court, by Hart, J., said:

> "In support of their contention they cite the case of *Mutual Life Ins. Co.* v. *Hillmon*, 145 U. S., 285. It must be conceded that that decision sustains the contention of the defend-

ants, but we do not agree with the reasoning of the Court in that case."

It is manifest that the Federal courts and the Arkansas courts do not interpret alike the effect of their respective consolidation statutes upon the practice and procedure thereunder. And the right exercised by the state court to indulge in new experiments in procedure should not be superior to the right of the Federal courts to follow its own long established practice.

The conformity act which became a law June 1, 1872, is as follows:

> "The practice, pleadings, and forms, and modes of proceedings in civil causes, other than equity and admiralty causes, in the circuit and district courts, shall conform, as near as may be, to the practice, pleadings, and forms, and modes of proceedings existing at the time in like causes in the courts of record of the state within which such circuit or district courts are held, any rule of the court to the contrary notwithstanding." (17 Stat. 197.

Under this statute conformance to the practice adopted by the Arkansas courts in construing the consolidation act is neither required nor justified on the part of the Federal courts. It would violate their own statute of consolidation, as they have interpreted it, and would result in a complete abandonment of their established methods of procedure.

In Bates on Federal Procedure and Law, Vol. 2, p. 680, Sec. 971, the following rule is stated:

> "The Federal courts will not conform to state procedure, when, to do so, would contravene any rule of procedure prescribed by a Federal statute, or when the state law pre-

scribing procedure is inconsistent with the terms, or would tend to defeat the purpose, or impair the effect, of any legislation of Congress."

In numerous Federal decisions are found illustrations of the limitations attached to this rule of conformance. In the *Hillmon* case, *supra*, where the question of consolidation involved the state practice of allowing the collective defendants only the challenge accorded one party, the United States Supreme Court rejected the state law for its own interpretation of the effect of the Federal consolidation act on the rights of the parties and the procedure thereunder.

See, also,

Mexican Central Ry. Co. v. *Pinkney*, 149 U. S., 194;
Shepherd v. *Adams*, 168 U. S., 618.
Hanks Dental Association v. *International Tooth Crown Co.*, 194 U. S., 303, 310;

The construction given the Arkansas Consolidation Act by the courts of that state, if it be assumed that this construction would have authorized the peculiar procedure that has been adopted in the case at bar, had the action been brought in the State Court, can not govern the practice in the Federal Court for the plain reason that the Federal courts have a consolidation statute of their own; and the attempt to change the practice in the Federal courts becomes the more glaring in view of the fact that the Federal statute is the same as the Arkansas statute and has received a contrary construction by the Federal courts.

The alleged Arkansas rule and the right asserted by these plaintiffs is furthermore in hopeless antagonism to the fundamental and sane doctrine laid down by this Court that after such consolidation the causes of action remain distinct and require separate verdicts and judgments:

> "But although the defendants may lawfully be compelled, at the discretion of the Court, to try the causes together, the causes of action remain distinct and require separate verdicts and judgments, and no defendant can be deprived, without his consent, of any right material to its defense, whether by way of challenge of jurors, or by objections to evidence, to which it would have been entitled if the causes had been tried separately." (*Mutual Life Ins. Co.* v. *Hillmon,* 145 U. S., 285.)

This is exactly what was not done in the present case and it shows conclusively that the court did not treat the action as a consolidated cause.

The verdict is as follows:

> "We, the jury, find the issues in favor of the plaintiffs and against the defendants and assess plaintiffs' actual damages at $200,000.-00. John Dunnigan, Foreman." Transcript, pp. 3237-3254.)

Upon the reading of this verdict, and while the jury was yet at the bar, the following proceedings were had:

> "Mr. Grant: I would like to except to the form of the verdict for the reason that, as we understand it, the verdict of the jury should apportion damages.
>
> "The Court: The court is of the opinion that that is true where actions are consolidated and where there are different pending actions. This, however, is only one action.

For instance, if there were three actions brought by A, B and C, then you have in your files pleadings in each, then it is true that apportionment should be made, but here the form of the complaint was made and I assume preliminary motions were made.

"Mr. Grant: We made the motion, Your Honor, but that was not passed on in the Circuit Court of Appeals, and we raised the question, and Judge Youmans overruled us on it.

"The Court: You are entitled to your exceptions."

The Circuit Court of Appeals tentatively questions the sufficiency of this exception, though it finally assumes its sufficiency for the purposes of a decision on the point. As shown by the above quotation from the record, the exception was fully understood by the court as suggesting an apportionment of the damages recoverable by defendants in error.

The practice in Arkansas does not authorize such a verdict. In the most extreme application of the rule said to have been adopted by that state, that parties may, under its consolidation act, originally join their causes in bringing suit, the court recognizes the necessary and inherent severalty of the demands. In *Southern Anthracite Coal Company* v. *Thrasher et al.*, 93 Ark. 140, 143, where two persons were injured in a mine and their suits for injuries were deemed to have been consolidated, a verdict was returned in favor of one for $5,000, and in favor of the other for $500.

In *Lumiansky* v. *Tessier,* 213 Mass. 182, the court said (p. 188):

"Where several causes are pending between the same or different parties which grow out of a single transaction or which involve an

> inquiry into the same event in its general aspect, although the details of evidence may vary materially in fixing responsibility, the court may order them tried together. But they continue separate so far as concerns docket entries, verdicts, judgments, and all aspects save only the one of a joint trial."

Moreover, the Federal Anti-Trust Acts provide a special proceeding, lying only within the jurisdiction of the Federal courts, and, to the extent they indicate the practice to be followed in actions to recover damages, must govern regardless of procedure in the state courts. Sec. 7 of the Sherman Act provides that "any person who shall be injured in his business or property * * * may sue therefor." The "clear and necessary implication" is that each person must bring his suit alone, not that parties may join their causes in such a proceeding. At the time this statute was enacted the practice in the Federal courts (and in Arkansas as well) was understood to prevent such a joinder. Is the statute not entitled to be interpreted—in the clause in question—as contemplating the observance of this existing procedure? Is the practice it contemplated subject to the future legislation of the states, or to the experiments in procedure adopted by their courts, especially in such revolutionary matters?

It was certainly never intended by Congress that the right of action thus given should be resorted to by a combination of plaintiffs seeking their several recourses by one action. While the bill was pending in the Senate, the question arose as to whether several plaintiffs might join together and sue for separate damages in one action. Senator George offered the following amendment:

"And, in all such actions, it shall be lawful for a number of persons complaining of such injuries committed by the same defendant against each of them separately to join as plaintiffs, and the Court or jury trying the issues of facts in any such case shall find the amount of the separate damages sustained by each plaintiff, and may also find in favor of a part of said plaintiffs, and against the others as the proof shall warrant, and the Court shall render judgment accordingly; and in the proceedings in a cause the Court may, if justice so requires, proceed with the trial thereof as to a part of said plaintiffs and continue the cause to a future day as to the remainder, and this may be done as often as justice may require, and whenever there shall be a motion for a new trial in any such case the Court may sustain the same as to part of said plaintiffs and overrule it as to the others, according as the right and justice of the case may require. Execution shall issue on any judgment rendered in such cause in favor of each plaintiff for the amount recovered by him, and for his reasonable attorneys' fees, and also for such share of the costs as the Court shall determine to be fair and reasonable." (Cong. Rec. Vol. 21, p. 3151).

Senator Morgan in debating the above amendment, said:

"I should have been perfectly satisfied with this bill, or the first three propositions of it, as a bill that would cover the evil, but we have gone further and given a personal remedy, to whoever may be injured in his business or property by the unlawful act defined and denounced to the statute. We cannot go every length. We cannot bring in a bill in the nature of a creditor's bill for the purpose of enabling a man to sue in favor of himself and of other persons who may find themselves in-

jured and therefore is given a creditor's bill to recover debts." (Cong. Rec. Vol. 21, p. 3149).

The amendment was rejected by the Senate. (Cong. Rec. 3151, *ib.*).

It is thus plainly shown that Congress had no idea of allowing a number of complaining parties with distinct interests to join in one huge suit, but intended that each aggrieved person would sue in his individual right.

Nothing will better reveal the capricious character of this proceeding than to follow its development. At the outset these nine plaintiffs assumed the right to join in one suit their several claims for damages under the Sherman Anti-Trust law. This was predicated on what they term the Arkansas practice, and in a vague effort to be logical, they acknowledged the separate interests and the several and separate damages sustained by the plaintiffs. Inspired by the same notion of consistency, they introduced evidence as to their separate holdings and losses. But at the conclusion of the trial, they were treated by the Court as plaintiffs having a unity of interest, and were accordingly allowed a lump sum verdict. In other words, instituted as a suit in which separate plaintiffs might join their several claims by reason of the extraordinary interpretation of the Arkansas Consolidation Act, their suit became one eventually in which they were allowed to recover as having a unity of interest in the damages allowed. As this procedure found no support even in the vagaries of the Arkansas practice alluded to, a new and composite theory was developed to justify it:—first, that the receivers were appointed in one

action and decree for all of these companies; second, that they constituted a business unit, and that the conspiracy in question was directed against all of the properties of the plaintiffs as a unit.

No authority in law has been offered for the curious proposition that because receivers were appointed for these nine corporations in one suit and in one decree, their separate causes of action thereby became joint. No such authority can be found. The rights of a receiver are the rights of the corporation, and his right of action is merely the right of action which the corporation originally possessed.

> Am. & Eng. Encyc. of Law, Vol. 23, p. 1073. "The appointment of the receiver does not have the effect of changing any rights of action, or of changing the contract relations between the original parties, against whom the receiver is appointed, and their debtors. The receiver, therefore, can not maintain an action upon a note or obligation running to the original party which he himself could not have maintained." (High on Receivers, 4 Ed., Sec. 204).

That the receiver was appointed receiver of different companies at the same time does not merge their assets, including choses of action, and can not have the effect of rendering their several rights joint rights. If John Smith is appointed guardian of James, George and William Brown, even in one proceeding and by one order of court, he would still be the guardian of their separate estates, and if each were injured by some wrong, he would have to sue separately to enforce their respective rights.

Finally, even upon the assumption that divers plaintiffs with separate demands under the Sherman Act may join in suing, it appears from the complaint that the five non-operating companies are wholly without any alleged rights of action. In the first place the averments of their assumed rights are badly pleaded:—"were financially interested in one or more of the aforesaid operating companies either through contracts of the lease of coal lands on which said operating companies were working, or through the ownership of all or the majority of the stock of said operating companies." Such disjunctive averments create utter indefiniteness and are wholly vicious as pleading. If it be said that the remedy in such a case is a motion to make more specific, we answer that this course was appealed to without result (*id.*, p. 217-218, par. 2 of Motion); as well as by a motion to strike out (*id.*, p. 214-17). This motion, so far as it pertains to this paragraph of the complaint, was overruled with exceptions.

Waiving the disputed character of the averments, which leaves the court without any certain information as to the alleged interests of the five non-operating companies—what interests can be imputed to them? Generally, "a financial interest in one or more of the operating companies," first, by reason of certain contracts or leases, or second, by certain stock holdings. Now a mere financial interest in an operating coal company does not authorize the party holding the interest to join the operating company in an action of this character. The fact that one of the plaintiffs had leased coal lands to another would not authorize a joinder. If it did, every farmer whose land was leased could join in the action. This would apply equally to the case of a land owner whose rented

or leased property was occupied by some manufacturing concern engaged in inter-state commerce. It would open the door to a motley array of plaintiffs, each claiming his right to be heard in the one case, because of what he terms his financial interest in the company really aggrieved. This reasoning applies equally as well to the pretense that holding stock in an operating company authorizes the stockholder to join in an action under this statute. Were this true what limitation could be put upon the plaintiffs entering suit? In no class of cases can a stockholder sue, unless it be for the corporation, and after the failure and refusal of the corporation and its officers to sue has been alleged. It has been expressly decided that a stockholder cannot maintain a suit under the Sherman Act for injuries suffered by his company through a conspiracy in restraint of trade.

Fleitman v. *Welsbach Co.*, 240 U. S. 27.
United Copper Co. v. *Amal. Copper Co.*, 244 U. S. 261.

The effort to gloss the joinder of these nine plaintiffs on the ground that they constitute one business, or economic unit cannot defeat the plain provisions of the law. However good as an *argumentum ad populum* this notion can find no support in law.

But in fact, there is nothing in the complaint to suggest that the nine companies constituted any kind of a unit. The separate holdings, operations, and leases of the operating companies are set out, plainly indicating that the pleader relied upon the right to join independent companies in such a suit and did not have in mind presenting the hotchpot rights of a so-called unit. As for the

other five companies, there is nothing to indicate their community of interest in each other, and only the ambiguous averment, above referred to, of their conjectural interests in the operating companies.

In conclusion it may be noted that the decisions of the Arkansas Courts relied upon by defendants in error do not support the view that such an action as this could have been brought even in an Arkansas State Court. These decisions (*St. Louis, I. M. & S. Ry. Co.* v. *Broomfield*, 83 Ark. 288; *Western Union Tel. Co.* v. *Shofner*, 87 Ark. 307; *Ashford* v. *Richardson*, 88 Ark. 124, and others) go upon the ground, not that the joinder of distinct plaintiffs with their separate causes of action is proper, but that this joinder is improper—not that the Consolidation Statute of Arkansas authorizes such a joining of plaintiffs in one action, or that a trial court should deny a defendant's motion to strike out upon this ground, but these cases merely hold that where a trial court has erroneously failed to grant a defendant's motion to strike out because of a misjoinder, the Supreme Court will not reverse the judgment, if it appears that the separate causes, if they had been brought separately, could have been consolidated. The decisions merely represent the views of the Arkansas Supreme Court as to harmless error.

Manifestly, the Conformity Act does not require a Federal Court to follow the decisions of the Arkansas Courts as to what they conceive to be harmless error or similar questions.

Nor can it be said that this plain error of misjoinder, recognized as such in the State Courts of

Arkansas as well as in the Federal Courts, was harmless in this case. The several fires occurred on different dates, under different circumstances. Some of the plaintiffs plainly had no cause of action whatsoever. All this was confusing to the jury and prejudicial to plaintiffs in error.

It may also be added that the provisions of the Arkansas Code as to parties plaintiff are, as already stated, the same as those found in Code States generally. We submit that for this Court to sanction the practice of refusing to recognize the right of a defendant to object to a plain misjoinder of parties plaintiff and their causes of action, such as exists in the present case, is to establish a precedent of far-reaching and mischievous consequences.

EIGHTH. The orders requiring the unincorporated labor unions and their officers to produce from their files books, writings and documents for the purpose of proving the officers and members of these unions guilty of the alleged criminal conspiracy were violative of their rights under the Fourth and Fifth Amendments to the Federal Constitution.

Despite protests based upon constitutional privilege under the Fourth and Fifth Amendments, the International Union, District 21 and the various defendant labor unions were compelled to produce various books, documents and records in order to assist plaintiffs in their attempt to prove the alleged criminal conspiracy (*id.* 301, 311, 324).

The defendant unions not being incorporated, the case of *Hale* v. *Henkel*, 201 U. S. 43, has no application.

It has been expressly held that an action under Section 7 of the Sherman Act is a penal action and that defendants are entitled to assert their constitutional rights in opposition to an order under Section 724 of the Revised Statutes.

American Banana Co. v. *United Fruit Co.*, 153 Fed. 943.

We submit that under the principles established in *Boyd* v. *United States*, 116 U. S. 616, the petition for the orders in the present case should have been denied.

NINTH. The judgment should be reversed and the complaint dismissed.

Respectfully submitted,
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